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HELEN PURCELL  
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**When recorded, return to:**

**City of Mesa  
20 East Main Street, #750  
Mesa, Arizona 85211  
Attn: Real Estate Services Director**

08-A073

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**PRE-ANNEXATION DEVELOPMENT AGREEMENT  
(Mesa Proving Grounds -- Hospitality Facilities and Convention Center)**

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**By, between and among**

**CITY OF MESA, ARIZONA,  
an Arizona municipal corporation;**

**GAYLORD MESA, LLC  
a Delaware limited liability company;**

**and**

**DMB MESA PROVING GROUNDS, LLC  
a Delaware limited liability company**

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**November 3, 2008**

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## PRE-ANNEXATION DEVELOPMENT AGREEMENT

This Pre-Annexation Development Agreement is made by, between and among the City of Mesa, an Arizona municipal corporation (the “City”), Gaylord Mesa, LLC, a Delaware limited liability company (“Gaylord”) and DMB Mesa Proving Grounds, LLC, a Delaware limited liability company (“DMB”). The City, Gaylord and DMB are sometimes referred to in this Agreement collectively as the “Parties,” or individually as a “Party.”

General Motors Corporation (“GMC”) has executed a consent to this Agreement but is not a Party. San Diego National Bank, a national banking association (“Existing Lender”), as DMB’s secured lender with respect to the Proving Grounds (as defined herein), has also executed a consent to this Agreement, agreeing to attorn to and recognize the terms, conditions, provisions and obligations of this Agreement, but is not a Party.

Capitalized terms used in this Agreement (including the foregoing introductory paragraphs) shall have the meanings ascribed to them parenthetically, in Section 1 of this Agreement, or otherwise in this Agreement.

### RECITALS

A. DMB owns certain real property, consisting of approximately 3,200 acres, located in an unincorporated portion of Maricopa County, Arizona, which is within an area of the County bounded by the corporate boundaries of the City and which real property is depicted on Exhibit “A-1” (the “Proving Grounds”). DMB intends to redevelop the Proving Grounds with office, retail, employment and residential uses and is seeking annexation of the Proving Grounds into the corporate limits of the City. The City desires to have the Proving Grounds annexed into the corporate limits of the City.

B. A portion of the Proving Grounds, consisting of approximately three hundred thirty-five (335) acres and which is legally described in Exhibit “A-2” and depicted on Exhibit “A-3” (the “Resort Property”), is proposed to be developed with certain hotel, resort and other hospitality facilities, a golf course and other improvements.

C. Gaylord intends to purchase from DMB approximately forty-nine (49) acres of the Resort Property, as depicted in Exhibit “A-3” (the “Hotel Property”), which depiction may be amended subject to the City’s reasonable approval, and to construct, or cause to be constructed the Hotel Improvements (as defined herein) in accordance with the terms of this Agreement applicable thereto (the Hotel Property and the Hotel Improvements are collectively referred to in this Agreement as the “Hotel”). Following completion of the Hotel Improvements, Gaylord intends to operate the Hotel consistent with the long-standing level of quality at the existing properties in Washington D.C., Orlando and Dallas operated by Gaylord’s Affiliates, all of which currently are American Automobile Association (“AAA”)-rated “four-diamond” properties.

D. Gaylord or an Affiliate intends to purchase from DMB approximately fifty-one (51) acres of the Proving Grounds, as depicted in Exhibit “A-3” (the “Convention Center Property”), which depiction may be amended subject to the City’s reasonable approval, and to

construct, or cause to be constructed the Convention Center (the “**Convention Center**”) in accordance with the terms of this Agreement applicable thereto (the Hotel Property and the Convention Center Property are collectively referred to herein as the “**Gaylord Property**”). Following completion of the Convention Center, Gaylord intends to operate the Convention Center consistent with the overall quality for convention center facilities located at the existing properties in Washington D.C., Orlando and Dallas operated by Gaylord’s Affiliates.

E. On a portion of the Resort Property that does not include the Gaylord Property, as depicted on Exhibit “A-3” (the “**Resort No. 2 Property**”), DMB intends to construct, or cause to be constructed, the Resort No. 2 Improvements (as defined herein) in accordance with the terms of this Agreement applicable thereto (the Resort No. 2 Property and the Resort No. 2 Improvements are collectively referred to in this Agreement as “**Resort No. 2**”).

F. On a portion of the Resort Property that does not include the Gaylord Property, as depicted on Exhibit “A-3”, DMB intends to construct or cause to be constructed the Golf Course (as defined herein) and other hospitality, mixed-use and/or commercial facilities.

G. DMB has filed a blank annexation petition with Maricopa County and meetings and hearings have been or will be held in connection with the annexation of the Proving Grounds into the City in accordance with Applicable Laws (as defined herein).

H. The Parties believe that the contemplated development and use of each of the Hotel, the Convention Center, Resort No. 2 and the Golf Course, respectively, as contemplated by this Agreement, is consistent with the Mesa 2025 General Plan, as amended prior to the approval of this Agreement (the “**General Plan**”), and will operate to the benefit of the City, Gaylord, DMB and the general public.

I. The development, redevelopment, operation, and expansion of uses of the Resort Property within the corporate limits of the City is of such significance that the City desires to encourage and facilitate such development, redevelopment, operation and expansion as provided in this Agreement.

J. The City, Gaylord and DMB understand and acknowledge that this Agreement is a “development agreement” within the meaning of, and authorized and entered into pursuant to, the provisions of A.R.S. § 9-500.05 in order to facilitate the development of the Resort Property by addressing, among other matters, certain matters relating to the development of the Hotel, the Convention Center, Resort No. 2 and the Golf Course, respectively. The Parties acknowledge that the terms of this Agreement shall constitute covenants running with the Gaylord Property, the Resort No. 2 Property and the remainder of the Resort Property, respectively, as more fully described in this Agreement.

K. The City, Gaylord and DMB also understand and acknowledge that this Agreement is authorized and entered into in accordance with the provisions of A.R.S. § 9-500.11. The actions taken and expenditures contemplated by the City pursuant to this Agreement are in connection with economic development activities as that term is used in A.R.S. § 9-500.11 and will enhance the economic vitality of the City in numerous ways, including,

without limitation: (i) increasing transaction privilege tax revenues and other revenues to the City; (ii) assisting in the creation and retention of jobs; (iii) increasing the City's employment base; (iv) establishing the City as a resort destination for City and Maricopa County residents and for visitors from Mexico, Canada and elsewhere in the United States; (v) stimulating further economic development; and (vi) otherwise improving and enhancing the economic welfare of the residents of the City. Pursuant to A.R.S. § 9-500.11, the City on October 20, 2008 adopted a notice of intent to enter into this Agreement and hereby makes the findings required by A.R.S. § 9-500.11(D).

L. The Parties also understand and acknowledge that Section 613 of the City Charter provides that "the City shall not expend public funds, grant tax concessions or relief, or incur any form of debt in an amount greater than one million, five hundred thousand dollars (\$1,500,000), and/or exchange or grant City-owned land of a fair market value in excess of one million, five hundred thousand dollars (\$1,500,000) to construct or aid in the construction of any amphitheater, sports complex, cultural or entertainment facility, arena, stadium, convention facility, or multipurpose facility without approval of the majority of the electorate voting thereon at the next ensuing election". The Parties also understand and acknowledge that there are economic benefits under this Agreement (the "**Economic Benefits**") that, under Section 613, require, and that it is necessary and desirable to obtain, the approval of a majority of the electorate voting thereon, and if the Economic Benefits are not approved by a majority of the City electorate voting at the Election, this Agreement shall terminate pursuant to Section 7.11(c).

### **AGREEMENTS**

NOW, THEREFORE, in consideration of the foregoing introductory paragraphs and Recitals, and the representations, mutual promises and agreements set forth herein, the Parties state, confirm, and agree as follows:

1. **DEFINITIONS.** In this Agreement, unless a different meaning clearly appears from the context:

1.1 "AAA" means as defined in Recital C.

1.2 "**Affiliate**," as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person. For the purposes of this definition, (i) "control" (including with correlative meaning, the terms "controlling," "controlled by" and "under common control"), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise, and (ii) "person" means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

1.3 “**Agreement**” means this Pre-Annexation Development Agreement, as amended and restated or supplemented in writing from time to time, and includes all exhibits and schedules hereto. References to Sections or Exhibits are to this Agreement unless otherwise qualified. The introductory paragraphs and Recitals set forth above are incorporated herein by reference and form a part of this Agreement.

1.4 “**Ancillary Documents**” means the Hotel Lease and the Convention Center Lease, in the case of Gaylord, and the Resort No. 2 Lease, in the case of DMB.

1.5 “**Annual Administrative Cost**” means as defined in Section 3.5(c)(3).

1.6 “**Applicable Laws**” means the federal, state and county laws, rules, ordinances and regulations and the City Regulations that are in effect at the time any submittal relating to the Hotel, the Convention Center, Resort No. 2 or the Golf Course, respectively, is made to the City or a determination of compliance is otherwise necessary or appropriate.

1.7 “**A.R.S.**” means the Arizona Revised Statutes as now or hereafter enacted or amended.

1.8 “**Bed Tax**” means the City’s Additional Tax Upon Transient Lodging (currently 3.0%), applicable to the Hotel or Resort No. 2, as the context requires.

1.9 “**City**” means as defined in the introductory paragraphs preceding the Recitals of this Agreement.

1.10 “**City Code**” means the Code of the City of Mesa, Arizona, as amended from time to time.

1.11 “**City Council**” means the City Council of the City.

1.12 “**City Regulations**” means the City charter, Code, ordinances, rules, regulations, standards, procedures, and administrative policies in effect from time-to-time.

1.13 “**Commencement of Construction**” means the occurrence of both: (i) the obtaining of a building, excavation, grading or similar permit; and (ii) the actual commencement of physical construction operations in a manner reasonably designed to cause, and with the intent at the commencement of such construction to diligently pursue, Completion of Construction of the Hotel Improvements and the Convention Center Improvements (in the case of Gaylord) and the Resort No. 2 Improvements (in the case of DMB).

1.14 “**Comparable Hotels**” means as defined in Section 2.2(a)(1).

1.15 “**Comparable Resorts**” means as defined in Section 3.2(a)(3)(A).

1.16 “**Completion of Construction**” means the date on which: (a) as to the Hotel, one or more temporary or final certificates of occupancy have been issued by the City for the Hotel Improvements and the Hotel is open for business to the public; (b) as to the Convention

Center, one or more temporary or final certificates of occupancy have been issued by the City for the Convention Center Improvements and the Convention Center is open for business to the public; (c) as to Resort No. 2, one or more temporary or final certificates of occupancy have been issued by the City for the Resort No. 2 Improvements and Resort No. 2 is open for business to the public; and, (d) as to the Golf Course, one or more temporary or final certificates of occupancy have been issued by the City for the Golf Course and the Golf Course is open for business.

1.17 “**Consents**” mean the consents of GMC and the Existing Lender, respectively, as described in the introductory paragraphs preceding the Recitals of this Agreement in the forms attached hereto.

1.18 “**Control**” means as defined in Section 1.2.

1.19 “**Convention Center**” means as defined in Recital D.

1.20 “**Convention Center Improvements**” means as defined in Section 2.3(a).

1.21 “**Convention Center Lease**” means as defined in Section 2.6(b).

1.22 “**Convention Center Property**” means as defined in Recital D.

1.23 “**CPI**” means as defined in Section 3.5(c)(3).

1.24 “**Cure Period**” means as defined in Section 2.8(a) and Section 3.7(a), respectively.

1.25 “**DMB**” means as defined in the introductory paragraphs preceding the Recitals of this Agreement.

1.26 “**Default**” means one or more of the events described in Section 2.8(a) or Section 3.7(a), respectively; provided, however, that such events shall not give rise to any remedy until effect has been given to any applicable Cure Period as specified in this Agreement, and/or any period of Enforced Delay provided for in this Agreement.

1.27 “**Economic Benefits**” mean as defined in Recital L.

1.28 “**Effective Date**” means the date on which all of the following have occurred: (i) this Agreement has been adopted and approved by the City Council and has been executed by duly authorized and appropriate representatives of the City, Gaylord and DMB and the Consents have been executed by duly authorized and appropriate representatives of GMC and Existing Lender, respectively; and (ii) this Agreement has been recorded in the office of the Recorder of Maricopa County, Arizona. Notwithstanding the foregoing, there may be conditions to the effectiveness of this Agreement satisfied after the Effective Date.

1.29 “**Election**” means as defined in Section 2.4(c).

1.30 “**Enforced Delay**” means as defined in Section 4.

1.31 “**Existing Lender**” means as defined in the introductory paragraphs preceding the Recitals to this Agreement.

1.32 “**Gaylord**” means as defined in the introductory paragraphs preceding the Recitals to this Agreement.

1.33 “**Gaylord Convention Center Minimum Requirements**” means as defined in Section 2.3.

1.34 “**Gaylord Economic Benefits**” means as defined in Section 2.6(a).

1.35 “**Gaylord Hotel Minimum Requirements**” means as defined in Section 2.2.

1.36 “**Gaylord Minimum Requirements**” means both the Gaylord Hotel Minimum Requirements and the Gaylord Convention Center Minimum Requirements.

1.37 “**Gaylord Property**” means as defined in Recital D.

1.38 “**General Plan**” means as defined in Recital H.

1.39 “**GMC**” means as defined in the introductory paragraphs preceding the Recitals to this Agreement.

1.40 “**Golf Course**” means as defined in Section 3.2(a)(1).

1.41 “**Hazardous Materials**” means any substance: (A) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, pollutant or contaminant under any governmental statute, code, ordinance, regulation, rule or order, and any amendment thereto, including (by way of illustration and not of limitation) the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, as amended; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, as amended; the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, as amended; the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*, as amended; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, as amended; the Arizona Hazardous Waste Management Act, A.R.S. § 49-921 *et seq.*, as amended; the Arizona Environmental Quality Act, A.R.S. § 49-101 *et seq.*, as amended, and any other laws that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water and land use, including sub-strata land; or (B) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including gasoline, diesel fuel, petroleum hydrocarbons, any other petroleum products or by-products, polychlorinated biphenyls (“PCBs”), asbestos, radon and urea formaldehyde form insulation; or (C) medical and biohazard wastes regulated by federal, state or local laws or authorities which includes any solid waste which is generated in the diagnosis, treatment or immunization of a

human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals.

1.42 “**Hotel**” means as defined in Recital C.

1.43 “**Hotel Bed Taxes**” means as defined in Section 2.6(c)(7).

1.44 “**Hotel Improvements**” means as defined in Section 2.2(a).

1.45 “**Hotel Lease**” means as defined in Section 2.6(b).

1.46 “**Hotel Operator**” means as defined in Section 2.5(b).

1.47 “**Hotel Property**” means as defined in Recital C.

1.48 “**MCVB**” means as defined in Section 2.5(c).

1.49 “**Monthly Tax Report/Hotel**” means as defined in Section 2.6(c)(3)(A).

1.50 “**Monthly Tax Report/Resort No. 2**” means as defined in Section 3.5(c)(4)(A).

1.51 “**Mortgage**” means as defined in Section 7.20.

1.52 “**Mortgagee**” or “**Mortgagees**” means as defined in Section 7.20(a).

1.53 “**Nonprofit Organization**” means as defined in Section 2.6(c)(2)(B).

1.54 “**Non-Traditional Hotel Rooms**” means lodging spaces that are timeshares, interval ownership units, condominium units, or other ownership structures that permit the individual lodging spaces to be separately conveyed and owned by parties other than Gaylord. For the purposes of determining the number of Non-Traditional Hotel Rooms, any single Non-Traditional Hotel Room that is subject to interval or other multiple ownership shall only be counted once.

1.55 “**Opening Date**” means (i) with respect to the Hotel and the Convention Center, the date on which each of the Hotel and the Convention Center are first open for business to the general public, or (ii) with respect to Resort No. 2, the date on which Resort No. 2 is first open for business to the general public.

1.56 “**Permitted Assignee**” means as defined in Section 7.10(b).

1.57 “**Providing Party**” means as defined in Section 7.19.

1.58 “**Proving Grounds**” means as defined in Recital A.

1.59 “**Qualifying Employee**” or “**Qualifying Employees**” means as defined in Section 2.5(a).



- 1.60 “**RN2 Bed Taxes**” means as defined in Section 3.5(c)(8).
- 1.61 “**Recitals**” means the recitals numbered “A” through “L” set forth in the Recitals portion of this Agreement following the introductory paragraphs.
- 1.62 “**Requesting Party**” means as defined in Section 7.19.
- 1.63 “**Resort No. 2**” means as defined in Recital E.
- 1.64 “**Resort No. 2 Economic Benefits**” means as defined in Section 3.5(a).
- 1.65 “**Resort No. 2 Improvements**” means as defined in Section 3.2(a)(3).
- 1.66 “**Resort No. 2 Lease**” means as defined in Section 3.5(b).
- 1.67 “**Resort No. 2 Minimum Requirements**” means as defined in Section 3.2(a).
- 1.68 “**Resort No. 2 Property**” means as defined in Recital E.
- 1.69 “**Resort Property**” means as defined in Recital B.
- 1.70 “**Special Account/Hotel**” means as defined in Section 2.6(c)(3)(A).
- 1.71 “**Special Account/Resort No. 2**” means as defined in Section 3.5(c)(4).
- 1.72 “**Special Warranty Deed – Gaylord Property**” means as defined in Section 2.6(b).
- 1.73 “**Special Warranty Deed – Resort No. 2 Property**” means as defined in Section 3.5(b).
- 1.74 “**Status Statement**” means as defined in Section 7.19.
- 1.75 “**Taxable Usage**” means as defined in Section 2.6(c)(2)(C)(III).
- 1.76 “**Term**” shall mean the term of this Agreement as set forth in Section 7.11.
- 1.77 “**Third Party**” means any person (as defined in Section 1.2(ii) above) other than a Party, or an Affiliate of a Party.
- 1.78 “**Total Promotion Cap/Hotel**” means as defined in Section 2.6(c)(2)(C).
- 1.79 “**Total Promotion Cap/Resort No. 2**” means as defined in Section 3.5(c)(2).

1.80 “**Tourism Promotion Amount/Gaylord**” means as defined in Section 2.6(c)(1)(A).

1.81 “**Tourism Promotion Amount/NPO**” means as defined in Section 2.6(c)(1)(B).

1.82 “**Tourism Promotion Amount/Resort No. 2**” means as defined in Section 3.5(c)(1).

1.83 “**Tourism Promotion Amounts/Hotel**” means as defined in Section 2.6(c)(1)(C).

1.84 “**Traditional Hotel Rooms**” means lodging spaces subject to payment of Bed Tax, and may include hotel rooms, suites, casitas, or other lodging spaces, however designated, other than Non-Traditional Hotel Rooms (except for any Non-Traditional Hotel Rooms that are considered Traditional Hotel Rooms pursuant to Section 2.2(a)(1) or Section 2.6(c)(2)(C)(III)).

1.85 “**Waiver**” means as defined in Section 7.22.

## 2. **GAYLORD HOTEL AND CONVENTION CENTER.**

2.1 **Application.** The provisions of this Article 2 apply solely to the Gaylord Property and the development thereof and nothing in this Article 2 shall apply to Resort No. 2. Consequently, DMB shall not be considered a “Party” for purposes of this Article 2, and shall have no rights, obligations or liabilities with respect to the provisions of this Article 2. Any references in this Article 2 to “Party” or “Parties” shall mean and refer solely to the City and Gaylord, as applicable, and any amendment, modification, termination or waiver of any provision in this Article 2 shall not require the consent or joinder of DMB. Termination of this Article 2 or any provisions hereof shall in no way impact the effectiveness of the remainder of this Agreement, except as provided in Section 3.2(a) of this Agreement relating to the availability of certain benefits in connection with the development of Resort No. 2.

2.2 **Gaylord Hotel Minimum Requirements.** The following are sometimes referred to collectively in this Agreement as the “**Gaylord Hotel Minimum Requirements.**”

(a) **Construction Conditions.** Gaylord shall have acquired the Hotel Property and shall have constructed a full-service, first-class hotel facility on the Hotel Property (the “**Hotel Improvements**”) which shall comply with the following standards at the date of Completion of Construction and at the Opening Date:

(1) The Hotel shall contain a minimum of one thousand two hundred (1,200) Traditional Hotel Rooms, and utilize a room and suite mix generally commensurate with existing Gaylord hotels in Washington, D.C., Orlando and Dallas (the “**Comparable Hotels**”). At Gaylord’s request, the City, through its City Manager, will consider allowing Gaylord to use Non-Traditional Hotel Rooms for purposes of satisfying the 1,200-Traditional Hotel Room requirement based on Gaylord’s intended or actual use of such Non-

Traditional Hotel Rooms (on a full or part time basis) in a manner that will, when used, generate the payment of Bed Tax. If so allowed, and as approved by the City Manager in his sole discretion, Non-Traditional Hotel Rooms may be counted, in whole or in part (e.g., one Non-Traditional Hotel Room may equal a fraction of a Traditional Hotel Room) towards satisfying the 1,200-Traditional Hotel Room requirement. Except for any Non-Traditional Hotel Rooms that are used to satisfy the 1,200-room requirement pursuant to the preceding sentence, Gaylord will not convert any of the Traditional Hotel Rooms used to satisfy the 1,200-room requirement to Non-Traditional Hotel Rooms without either replacing the converted Traditional Hotel Rooms with additional Traditional Hotel Rooms or obtaining the City Manager's prior written consent of such conversion, which consent may be given or withheld in the City Manager's sole discretion. As provided herein, the City Manager is authorized to approve, in his sole discretion, and with such limitations, conditions and additional terms as he determines are appropriate, to allow Non-Traditional Hotel Rooms to be counted in whole or in part as Traditional Hotel Rooms for purpose of this Section. The prohibition on converting Traditional Hotel Rooms to Non-Traditional Hotel Rooms in the preceding sentence shall not restrict or prohibit Gaylord from demolishing or taking out of service such Traditional Hotel Rooms or otherwise converting the use of such Traditional Hotel Rooms to any use that is not a Non-Traditional Hotel Room.

(2) The Hotel will be master planned to allow for its expansion to two thousand five hundred (2,500) hotel rooms and at least one hundred (100) casitas, provided, however, that Gaylord shall have no obligation to construct any rooms and/or suites or any casitas.

(3) The Hotel shall contain amenities that will be generally commensurate with existing Comparable Hotels, including restaurants, retail shops, tennis, spa and resort pool, and be consistent in overall quality (including materials and finishes) and range of facilities and services with the facilities at the Comparable Hotels as of the date of approval of this Agreement by the City.

(4) The Hotel shall be a full-service, first-class hotel consistent in overall quality, range of facilities and services with the Comparable Hotels all of which currently are AAA rated "four-diamond properties."

(b) **Commencement of Construction.** Commencement of Construction of the Hotel Improvements shall occur no later than December 31, 2011, subject to Enforced Delay.

(c) **Completion of Construction.** Completion of Construction of the Hotel Improvements shall occur no later than December 31, 2014, subject to Enforced Delay.

2.3 **Convention Center. Gaylord Convention Center Minimum Requirements.** The following are sometimes referred to collectively in this Agreement as the "Gaylord Convention Center Minimum Requirements."

(a) **Construction Conditions.** Gaylord shall have acquired the Convention Center Property, and constructed the Convention Center on the Convention Center

Property (the “**Convention Center Improvements**”) which shall comply with the following standards at the Completion of Construction and at the Opening Date:

(1) The Convention Center shall include a minimum of two hundred twenty-five thousand (225,000) net square feet of indoor meeting space (as part of a minimum of five hundred thousand (500,000) gross square feet of new construction under roof), not including pre-function, other public areas and back-of-house support space. Additionally, the Convention Center shall include not less than sixty thousand (60,000) square feet of outdoor meeting space.

(2) The Convention Center shall include large ballrooms (with at least one (1) room capable of seating two thousand five hundred (2,500) persons for dinner), exhibition space, column-free space and break-out space.

(3) The Convention Center shall be master-planned for expansion of the indoor meeting space to a minimum of 365,000 net square feet of indoor meeting space, not including pre-function and support space.

(4) The Convention Center shall be consistent in overall quality (including materials and finishes), range of facilities and services with existing convention center facilities operated by Gaylord’s Affiliates appurtenant or adjacent to the Comparable Hotels. Gaylord will develop and intends to operate the Convention Center consistent with the long-standing level of quality at these facilities.

(b) **Commencement of Construction.** Commencement of Construction of the Convention Center Improvements shall occur no later than December 31, 2011, subject to Enforced Delay.

(c) **Completion of Construction.** Completion of Construction of the Convention Center Improvements shall occur no later than December 31, 2014, subject to Enforced Delay.

#### 2.4 **Contemplated Development Matters.**

(a) **City Review and Approval of Plans.** Gaylord recognizes that its development and construction of the Hotel Improvements and the Convention Center Improvements pursuant to this Agreement are subject to the City’s normal and customary plan submittal, review and approval processes.

(b) **Compliance with Applicable Laws.** All development upon and within any portion of the Gaylord Property, including construction of the Hotel Improvements and the Convention Center Improvements, shall be in full compliance with all Applicable Laws.

(c) **Public Vote.** Pursuant to the provisions of Section 613 of the City Charter, City staff shall seek authority from its City Council to conduct a special election in 2009, for the purpose of providing the citizens of the City with the opportunity to approve or reject the Economic Benefits in this Agreement (the “**Election**”).

## 2.5 Additional Gaylord Obligations.

(a) **Employee Minimum.** At the Opening Date of the Hotel, Gaylord and its Affiliates or their contractors, subcontractors and lessees, shall employ a minimum of one thousand (1,000) full time employees on-site or off-site in conjunction with the operation (and not the construction) of the Hotel and the Convention Center (each a “**Qualifying Employee**” and collectively the “**Qualifying Employees**”). Part-time employees may be aggregated for purposes of determining the number of Qualifying Employees (e.g., two employees that are each employed twenty (20) hours per week shall equal a single Qualifying Employee). Employees employed for construction, opening or initial operations only shall not count for purposes of determining the number of Qualifying Employees for purposes of this Section. If there are fewer than one thousand (1,000) Qualifying Employees employed at the Opening Date of the Hotel, then the City’s obligation to pay the Tourism Promotion Amounts/Hotel pursuant to Section 2.6(c) shall not arise until there are at least one thousand (1,000) Qualifying Employees.

(b) **Hotel Operator.** Until the third anniversary of the Opening Date, the operator of the Hotel (the “**Hotel Operator**”) shall be Gaylord or a professional hotel management Affiliate of Gaylord, unless otherwise approved by the City, which approval shall not to be unreasonably withheld, conditioned or delayed; provided that no approval of the acquirer of, or successor to, Gaylord shall be required in the event of an acquisition or merger of Gaylord or any Affiliate which directly or indirectly controls Gaylord. If, prior to the third anniversary of the Opening Date, Gaylord assigns the responsibility for operation of the Hotel to an entity that is not a professional hotel management Affiliate of Gaylord or approved by the City, then the City’s obligation to pay the Tourism Promotion Amounts/Hotel pursuant to Section 2.6(c) shall be cancelled from and after such assignment and until the third anniversary of the Opening Date.

(c) **MCVB.** Gaylord agrees to permit the Mesa Convention and Visitors’ Bureau (“**MCVB**”), at its expense, to construct and maintain a promotional information center to promote tourism in the City at an appropriate location on the Hotel Property at a location and of a size to be reasonably determined by Gaylord. The cost of constructing, placing and maintaining such center, if any, shall be borne solely by the MCVB. Gaylord may impose reasonable rules and regulations on the operation of such information center, including, but not limited to, regulations relating to the appearance of the center, the hours of operation and the appearance of employees staffing the MCVB.

(d) **Name of Hotel.** In the name of the Hotel, Gaylord shall not use (or permit the use of) a name that is or includes the name of a municipality in Arizona other than “Mesa”; provided, however, that Gaylord has no obligation to include the name “Mesa” (or any other geographic place name) in the name of the Hotel. With respect to a failure to comply with the provisions of this Section 2.5(d), the City’s exclusive remedy shall be the collection from Gaylord of \$5,000 for each day that such failure to comply continues, which sum shall constitute liquidated damages and not a penalty. The Parties have agreed that the actual damages sustained by the City in the event of such non-compliance are not reasonably susceptible to precise computation or estimation.

(e) **Name of Convention Center.** In the name of the Convention Center, Gaylord shall not use (or permit the use of) a name that is or includes the name of a municipality in Arizona other than “Mesa”; provided, however, that Gaylord has no obligation to include the name “Mesa” (or any other geographic place name) in the name of the Convention Center. With respect to a failure to comply with the provisions of this Section 2.5(e), the City’s exclusive remedy shall be the collection from Gaylord of five thousand dollars (\$5,000) for each day that such failure to comply continues, which sum shall constitute liquidated damages and not a penalty. The Parties have agreed that the actual damages sustained by the City in the event of such noncompliance are not reasonably susceptible to precise computation or estimation.

(f) **Convention Center Operator.** At all times, the Convention Center shall be operated by the Hotel Operator.

(g) **Compliance with Federal Immigration Laws and Regulations.** To the extent that A.R.S. § 23-214(b) is applicable, Gaylord and its Affiliates shall comply, and be responsible for all non-compliance, with A.R.S. § 23-214(b) and all other Applicable Laws.

(h) **Overflow Bookings.** Gaylord shall use reasonable efforts to cause its overflow bookings at the Hotel to be referred to available high-quality hospitality facilities within the City reasonably acceptable to Gaylord, including Resort No. 2.

(i) **No Contractual Obligations.** Failure to construct the Gaylord Minimum Requirements shall not constitute a Default under this Agreement. The Gaylord Minimum Requirements are express conditions precedent to the obligation of the City to provide the Gaylord Economic Benefits.

## 2.6 **Gaylord Economic Benefits.**

(a) **Premises.** The City has determined that the development of the Gaylord Property with the Hotel Improvements and the Convention Center Improvements (i) will enhance the economic viability of the City in numerous ways, including, without limitation, (A) increasing transaction privilege tax revenues and other revenues to the City, (B) increasing the City’s employment base, (C) stimulating further economic development, and (D) otherwise improving or enhancing the economic welfare of the residents of the City; (ii) is not likely to occur (or to occur at this time and/or in this manner and/or at this location) without the benefits provided in this Agreement; and (iii) demonstrates the potential to generate revenues and other benefits (both tangible and intangible) to the City that outweigh or are not disproportionate to the costs associated with these benefits. Accordingly, the City shall provide to Gaylord the economic benefits described in this Section 2.6 (the “**Gaylord Economic Benefits**”), in consideration of and solely and expressly conditioned upon Gaylord’s (or its permitted successors and/or assigns) satisfaction of the Gaylord Minimum Requirements.

(b) **Conveyance and Lease.** On or after the Effective Date, the City will accept a conveyance of the Gaylord Property from Gaylord utilizing the form of special warranty deed attached to this Agreement as **Exhibit “B”** (the “**Special Warranty Deed – Gaylord Property**”), and thereupon the City shall (i) lease the Hotel Property back to Gaylord

pursuant to the form of lease attached to this Agreement as **Exhibit “C”** (the “**Hotel Lease**”); and (ii) lease the Convention Center Property back to Gaylord pursuant to the form of lease attached to this Agreement as **Exhibit “D”** (the “**Convention Center Lease**”). Notwithstanding the foregoing, the obligation of the City to accept the conveyance of the Gaylord Property is expressly conditioned upon the City’s prior approval, in its reasonable commercial discretion, of an environmental site assessment of the Gaylord Property, with such assessment (i) being prepared and issued by a licensed environmental consultant or engineer reasonably satisfactory to the City, (ii) being certified to the City and the City Council, and (iii) being dated no earlier than one hundred eighty (180) days prior to the date of conveyance. Gaylord shall pay and be solely responsible for all costs and expenses required in connection with the issuance and certification of such assessment to the City. The presence of a recognized environmental condition (whether present or historic), inter alia, shall constitute grounds for the City’s reasonable disapproval of the environmental site assessment.

(c) **Payments of Tourism Promotion Amounts/Hotel.**

(1) **Definitions.**

(A) **Tourism Promotion Amount/Gaylord.** “**Tourism Promotion Amount/Gaylord**” means, for the purposes of this Agreement, the first two percent (2%) portion of the City’s Bed Tax derived from the Hotel only (and no other portion of the City’s Transaction Privilege Tax as defined or described in the City Code), actually collected and received by the City with respect to or from activities on the Hotel Property. Such two percent (2%) is to remain fixed during the Term, notwithstanding any increase in the City’s Bed Tax for any reason whatsoever. The risk of decrease in the Bed Tax rate shall rest solely with Gaylord.

(B) **Tourism Promotion Amount/NPO.** “**Tourism Promotion Amount/NPO**” means, for the purposes of this Agreement, the remaining one percent (1%) portion the City’s three percent (3%) Bed Tax (and no other portion of the City’s Transaction Privilege Tax as defined or described in the City Code), actually collected and received by the City with respect to or from activities on the Hotel Property. Such one percent (1%) is to remain fixed during the Term, notwithstanding any increase in the City’s Bed Tax Rate for any reason whatsoever. The risk of decrease in the Bed Tax rate shall rest solely with NPO.

(C) **Tourism Promotion Amounts/Hotel.** “**Tourism Promotion Amounts/Hotel**” means the Tourism Promotion Amount/Gaylord and the Tourism Promotion Amount/NPO, collectively.

(D) **Effect of Bed Tax Rate Reduction.** In the event of a decrease in the Bed Tax below 3%, such decrease shall be implemented first by a reduction in the Tourism Promotion Amount/NPO and, then, if such decrease reduces the Bed Tax below 2%, by a reduction in the Tourism Promotion Amount/Gaylord.

(2) **Payments.** Upon satisfaction by Gaylord of the Gaylord Minimum Requirements, the City shall commence paying the Tourism Promotion Amounts/Hotel as follows and subject to the following limitations:

(A) **Tourism Promotion Amount/Gaylord.** To Gaylord, until the earlier of (i) thirty (30) years from Completion of Construction of the initial Hotel Improvements, or (ii) the date the present value of the payments of the Tourism Promotion Amounts/Hotel, equals the Total Promotion Cap/Hotel. Payment of the Tourism Promotion Amount/Gaylord shall be paid, and secured by a pledge thereof (as further defined in Section 2.6(c)(7) of this Agreement) to Gaylord, and shall be used for the promotion of tourism in the City or a part thereof.

(B) **Tourism Promotion Amount/NPO.** To a nonprofit organization or association (i) formed for the promotion of tourism and/or to promote the Hotel and amenities as tourism related attractions and facilities, and (ii) on terms and conditions designated by Gaylord and approved by the City, in its reasonable discretion (the “**Nonprofit Organization**”) until the earlier of (x) thirty years from Completion of Construction of the initial Hotel Improvements, or (y) the date that the present value of the payment of the Tourism Promotion Amounts/Hotel equals the Total Promotion Cap/Gaylord. Payment of Tourism Promotion Amount/NPO shall be paid, and secured by a pledge thereof (as further defined in Section 2.6(c)(7) of this Agreement) to the Nonprofit Organization, and shall be used for the promotion of tourism in the City or a part thereof.

(C) **Total Promotion Cap/Hotel.** For purposes of this Agreement, “**Total Promotion Cap/Hotel**” means Forty-Four Million Dollars (\$44,000,000.00) in present value as of the Completion of Construction of the initial Hotel Improvements utilizing a discount rate of twelve percent (12%) per annum from the date of receipt of any payment to the date of Completion of Construction to compute the present value of all payments made, subject to adjustment as follows:

(I) If on the Hotel Opening Date, the Hotel has more than one thousand two hundred (1,200) Traditional Hotel Rooms but fewer than one thousand five hundred (1,500) Traditional Hotel Rooms, then the Total Promotion Cap/Hotel shall be adjusted to the amount set forth on Schedule 2.6(c)(2)(C)(I) until such time as the Hotel has a total of at least one thousand five hundred (1,500) Traditional Hotel Rooms, in which case the Total Promotion Cap/Hotel shall be increased to \$44,000,000.

(II) If during the thirty (30) years following Completion of Construction, the total number of Traditional Hotel Rooms exceeds one thousand five hundred (1,500) and so long as Gaylord has no present intention at the time any such excess Traditional Hotel Rooms are completed to reduce the total number of Traditional Hotel Rooms in a manner that would offset such increase, in whole or in part, then the Total Promotion Cap/Hotel shall be increased in proportion to the increase in the number of Traditional Hotel Rooms in excess of one thousand five hundred (1,500). An example of the increase in the Total Promotion Cap/Hotel in the event of such an increase is set forth on Schedule 2.6(c)(2)(C)(II). Except as provided in Section 2.6(c)(2)(C)(III), if the number of Traditional Hotel Rooms is



decreased following any adjustment pursuant to this Section, the Total Promotion Cap/Hotel shall not be adjusted as a result of such decrease. Notwithstanding the foregoing, in no event shall the Total Promotion Cap/Hotel exceed the amount applicable to a 2,500-room Hotel.

(III) For purposes of determining the Total Promotion Cap/Hotel pursuant to this Section, if the Hotel includes Non-Traditional Hotel Rooms, the City, through its City Manager, and Gaylord will agree on a number of Non-Traditional Hotel Rooms to be counted as Traditional Hotel Rooms based on the number of Non-Traditional Hotel Rooms that will, when used, generate the payment of Bed Taxes (“**Taxable Usage**”). By way of example, if Non-Traditional Hotel Rooms will be available for Taxable Usage on a part time basis, the City and Gaylord will determine the appropriate method to aggregate the periods of Taxable Usage for purposes of counting Non-Traditional Hotel Rooms as Traditional Hotel Rooms (e.g., one Non-Traditional Hotel Room may equal a fraction of a Traditional Hotel Room) . If after determining the manner in which Non-Traditional Hotel Rooms will be counted as Traditional Hotel Rooms for purposes of this Section Gaylord changes the ownership structure or occupancy program under which all or some of the Non-Traditional Hotel Rooms are used and as a result it is anticipated that the periods of Taxable Usage will materially increase or decrease, then the City, through its City Manager, and Gaylord shall agree on an adjustment to the number of Non-Traditional Hotel Rooms that will be counted as Traditional Hotel Rooms and a corresponding increase or decrease in the Total Promotion Cap/Hotel. With respect to the determination required under this Section, the City Manager is authorized to make all decisions on behalf of the City as to which Non-Traditional Hotel Rooms are to be counted in whole or in part as Traditional Hotel Rooms.

(3) **Accounting.**

(A) The City shall account for Bed Taxes used for the computation of the Tourism Promotion Amounts/Hotel under this Agreement by way of journal entry (or, at the City’s election, deposit) in a special account established to facilitate the computations and payments anticipated by this Agreement (the “**Special Account/Hotel**”). The Special Account/Hotel shall be a bookkeeping record or entry of the City; and the City may, but shall not be required, to deposit the funds reflected in the Special Account/Hotel in a separate account at a bank or other financial institution or otherwise. The first credit to the Special Account/Hotel shall be made after the Completion of Construction of the Hotel Improvements, within sixty (60) days following the City’s receipt of a monthly transaction privilege tax report that includes Bed Taxes actually paid to and received by the City with respect to the Hotel Property (each, a “**Monthly Tax Report/Hotel**”), and subsequent credits shall be made within sixty (60) days following the City’s receipt of each subsequent Monthly Tax Report/Hotel until the expiration of the payment obligations as described in Section 2.6(c)(2). The quarterly Tourism Promotion Amounts/Hotel paid to Gaylord and the Nonprofit Organization shall be debited by the City from the Special Account/Hotel.

(B) Notwithstanding the credit of funds to the Special Account/Hotel, neither Gaylord nor the Nonprofit Organization shall have any right in the Special Account/Hotel and no payment of Tourism Promotion Amounts/Hotel shall be made to Gaylord or the Nonprofit Organization until the Gaylord Minimum Requirements have been

satisfied; provided, however, prior to such occurrence, the Tourism Promotion Amounts/Hotel shall accumulate in the Special Account/Hotel for subsequent disbursement as described in this Section 2.6(c) and the pledge thereof in accordance with Section 2.6(c)(7) shall remain in full force and effect until such agreement is terminated. If the Gaylord Minimum Requirements are not timely satisfied and this Agreement is terminated as described in Section 2.7, all funds and interest accrued thereon in the Special Account/Hotel shall be property of and credited to the City free of any claim or interest of Gaylord or the Nonprofit Organization and the Special Account/Hotel and any related pledge by the City shall terminate.

(4) **Quarterly Payments.**

(A) Payments of the Tourism Promotion Amounts/Hotel shall be made quarterly on the schedule set forth on Schedule 2.6(c)(4) attached hereto. Notwithstanding anything contained in such Schedule, the first payment of any Tourism Promotion Amounts/Hotel (which shall include accumulated Tourism Promotion Amounts/Hotel, if any, reflected in the Special Account/Hotel) shall be made by the City to Gaylord or the Nonprofit Organization, as applicable, at the first regularly scheduled payment date following the date the Gaylord Minimum Requirements have been satisfied.

(B) Notwithstanding any provision of this Section 2.6(c)(4) to the contrary, the City may make payments of the Tourism Promotion Amounts/Hotel more often than required under the terms of this Agreement. The City's decision to do so, however, shall not alter the schedule of City payments applicable thereafter.

(5) **Computation and Report of Tourism Promotion Amounts/Hotel.** Within ninety (90) days following the end of each City fiscal year, the City will deliver to Gaylord and the Nonprofit Organization a statistical report of the Tourism Promotion Amount/Gaylord and Tourism Promotion Amount/NPO, as applicable, received from taxable activities at the Hotel Property. Any such report shall be subject to Applicable Laws that may prohibit or limit the dissemination or use of personal, financial or tax information by the City. The City's computation, certified as accurate by its chief financial officer, shall be final, binding and non-appealable, except for a mathematical error in the computation. Subject to the foregoing, Gaylord shall have the right to contest any computation within such report if, and only if, Gaylord notifies the City within sixty (60) days after Gaylord's receipt of such report from the City.

(6) **Use of Tourism Promotion Amounts/Hotel.**

(A) Gaylord covenants and agrees to use Tourism Promotion Amount/Gaylord solely for "promotion of tourism" as used in A.R.S. §9-500.06, as amended, or any replacement or successor statute, provided, however, that the promotion of tourism shall be limited to promoting locations in Mesa, which activities may include, but are not limited to, any and all forms of advertising and promotion of the Hotel and Convention Center, including, without limitation, all forms of media advertising (including television, radio, print, billboard, brochure and Internet), direct mail, direct marketing, sponsorship marketing and related promotional activities, marketing through trade associations, including, without

limitation, targeted marketing trips to association meetings, conventions and related events, complimentary trips to familiarize convention or trade show organizers with the Hotel and Convention Center, other travel to promote the Hotel and Convention Center, and other advertising and promotional activities developed as part of an overall advertising and marketing strategy to promote the Hotel and Convention Center. Such marketing costs may also include, without limitation, direct and indirect costs, such as salaries, benefits and bonuses, related to the hiring or compensation of sales, public relations and marketing staff provided, however that such staff costs are directly related to promoting the Hotel and Convention Center or otherwise marketing attractions and facilities in the City.

(B) The Nonprofit Organization, by acceptance of any payment of Tourism Promotion Amount/NPO, shall be deemed to have covenanted and agreed to use Tourism Promotion Amount/NPO solely for “promotion of tourism” as used in A.R.S. §9-500.06, as amended, or any replacement or successor statute, provided, however, that the promotion of tourism shall be limited to promoting locations in Mesa.

(C) Gaylord agrees, and the Nonprofit Organization by acceptance of such payment shall be deemed to have agreed, that the City, upon payment of the Tourism Promotion Amount/Gaylord to Gaylord and payment of the Tourism Promotion Amount/NPO to the Nonprofit Organization, shall have no obligation to review, supervise or oversee the use of Tourism Promotion Amount/Gaylord and Tourism Promotion Amount/NPO received by such entities, but instead may unconditionally rely upon the covenants and agreements contained in this Agreement. Notwithstanding the foregoing, the City, at its expense, may, within eighteen (18) months after the end of any fiscal year of Gaylord or the Nonprofit Organization, as applicable, review the use of all Tourism Promotion Amounts/Hotel paid to Gaylord and/or the Nonprofit Organization. Gaylord shall, and the Nonprofit Organization, by acceptance of such payment, shall be deemed to have agreed to cooperate fully with any such review and produce all documentation and other evidence of use of the Tourism Promotion Amounts/Hotel reasonably requested, from time-to-time, by the City or, if applicable, the State. Gaylord covenants and agrees, and the Nonprofit Organization by its acceptance of the Tourism Promotion Amount/NPO shall be deemed to have covenanted and agreed, to maintain its books and records relating to its expenditure of the Tourism Promotion Amount/Hotel and/or the Tourism Promotion Amount/NPO, as applicable, for a period of seventy-two (72) months after the end of any fiscal year of Gaylord or the Nonprofit Organization, as applicable, and will cooperate with the City in connection with any review of such expenditures by the State of Arizona.

(7) Pledge by City. The City hereby pledges the revenues received from the Bed Taxes with respect only to the Hotel (the “**Hotel Bed Taxes**”) described in Section 2.6(c) for the payment of the Tourism Promotion Amount/Gaylord. The City intends that this pledge shall be a lien upon the Hotel Bed Taxes to secure timely payment of the benefit amounts described in this Article 2.

(A) This pledge is subordinate and subject to all existing pledges of the Hotel Bed Taxes to outstanding obligations of the City. The City will not make

any additional pledge of the Hotel Bed Taxes on a basis senior to, or on parity with, the pledge described in this Section 2.6(c)(7).

(B) The amounts due hereunder are secured by a pledge of, and are payable solely from, the Hotel Bed Taxes collected from the Hotel Property and actually received by the City. The City is not obligated to make any payments from any other funds of the City. This obligation does not represent or constitute, and shall not represent or constitute, a debt or a direct or indirect pledge of the full faith and credit of the City, or of the State of Arizona, or of any political subdivision or agency thereof.

(C) The Hotel Bed Taxes paid hereunder shall be used solely for the purposes provided in this Section 2.6, and Gaylord shall not pledge or assign this obligation of the City or its right to receive payment hereunder as security for any loans or other obligations of any nature except in connection with or pursuant to a Mortgage. Gaylord shall not sell, assign or transfer in any manner, this obligation of the City or Gaylord's right to receive payments hereunder, except with respect to an assignment or transfer of all of Gaylord's rights under this Agreement pursuant to Section 7.10.

(d) **Community Facilities District**. Gaylord may petition the City to form a community facilities district encompassing the Gaylord Property with terms and conditions as set forth in the Development, Financing Participation and Intergovernmental Agreement No. 1, as may be revised and amended from time to time, which is attached as **Exhibit "E"** hereto.

2.7 **Non-Performance of Construction Conditions.** The Gaylord Minimum Requirements must be satisfied in accordance with the terms and conditions of this Agreement prior to the City being obligated to grant the Gaylord Economic Benefits. Failure to meet the Gaylord Minimum Requirements will not constitute a Default, nor will it entitle City to seek specific performance or to pursue other legal or equitable remedies; provided, however, (i) if Commencement of Construction of the Hotel Improvements and the Convention Center Improvements fails to occur on or before the dates set forth in Section 2.2(b) or Section 2.3(b), as applicable, and such failure (A) is not due to an Enforced Delay and (B) continues for a period of ninety (90) days following written notice from the City or (ii) if Completion of Construction of the Hotel Improvements and the Convention Center Improvements fails to occur on or before the dates set forth in Section 2.2(c) or Section 2.3(c), as applicable, and such failure (A) is not due to an Enforced Delay and (B) continues for a period of one hundred eighty (180) days following written notice from the City, the City may terminate Section 2 of this Agreement by written notice to Gaylord, in which event (i) the City shall re-convey the Gaylord Property and all improvements thereon to Gaylord; (ii) the Hotel Lease and the Convention Center Lease shall automatically and without further act terminate; and (iii) any payment and pledge obligations of the City under Section 2.6 of this Agreement shall automatically and without further act terminate.

2.8 **Default and Cure Period.**

(a) Except as otherwise provided in Section 2.7 of this Agreement, if Gaylord or the City fails to perform its obligations under this Agreement and such failure continues for a period of sixty (60) days after written notice thereof from the other Party (the “**Cure Period**”), such failure shall constitute a default under this Agreement (a “**Default**”); provided, however, that if the failure is such that more than sixty (60) days would reasonably be required to perform such action or comply with any term or provision hereof, then such Party shall have such additional time as may be necessary to perform its obligations so long as such Party commences performance or compliance within said sixty (60) day period and diligently proceeds to complete such performance. Any notice of an alleged Default shall specify the nature of the alleged Default and the manner in which said Default may be satisfactorily cured. If a Default is not cured within the Cure Period, the non-defaulting Party shall have the remedies set forth in Section 2.8(b) or Section 2.8(c) of this Agreement, as applicable.

(b) **City Remedies.**

(1) Whenever a Default occurs and is not cured (or, if appropriate, cure undertaken) by Gaylord in accordance with Section 2.8(a) of this Agreement, the City’s sole and exclusive remedies shall consist of and be limited to the following:

(A) The City may recover any amounts owing to the City pursuant to any payment obligations of Gaylord under this Agreement;

(B) The City may seek injunctive, specific performance or declaratory relief for any non-monetary Default which continues after the notice period and Cure Periods set forth in Section 2.8(a). Gaylord further agrees that injunctive, specific

performance or declaratory relief for any non-monetary Default is appropriate in the event of a failure by Gaylord to perform any of its obligations under this Agreement.

(C) With respect to a failure to comply with the provisions of Section 2.5(a), Section 2.5(b), Section 2.5(d) or Section 2.5(e), the City shall have the exclusive remedies specifically set forth in those Sections.

(D) In any event, Gaylord's indemnification obligations under this Agreement shall survive expiration or termination of this Agreement, for a period equal to the applicable statute of limitations period, and the City shall have all remedies available at law or in equity or under this Agreement, to enforce and give effect to its indemnification rights, other than the right to terminate this Agreement.

(E) All such remedies shall be cumulative and not exclusive of one another except as provided in this Agreement, and the exercise of any one or more of the remedies shall not constitute a waiver or election with respect to any other available remedy.

(c) **Gaylord Remedies.** Whenever a Default occurs and is not cured (or, if appropriate, cure undertaken) by the City in accordance with the notice and Cure Period provisions of Section 2.8(a) of this Agreement, the City expressly acknowledges and agrees that Gaylord may seek specific performance, an injunction, special action, declaratory relief or other similar relief requiring the City to undertake and fully and timely perform its obligations under this Agreement and/or Gaylord may seek damages from the City limited to the amount of any undisbursed funds that a court determines should properly be disbursed to Gaylord, and not for any other damages of any kind or nature. City further agrees that specific performance, special action, declaratory or injunctive relief is appropriate in the event of a failure to disburse funds due and payable to Gaylord under the terms of this Agreement or a failure by City to perform any of its performance obligations under this Agreement. Except as expressly provided herein, Gaylord expressly waives any and all right to seek damages of any kind or nature as a remedy with respect to a Default by the City, although any order or equitable decree may require the City to disburse monies it may be obligated to disburse pursuant to this Agreement. All such remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of the remedies shall not constitute a waiver or election with respect to any other available remedy.

(d) **Limitation on Damages.** Claims for damages by the City (when and if permitted) shall be limited to actual and consequential damages as of the time of entry of judgment. Gaylord's right to damages shall be limited to the circumstances and amount specified in Section 2.8(c). The City and Gaylord hereby waive any right to seek punitive, multiple, exemplary or any other damages.

(e) **Delays; Waivers.** Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Default by the other Party shall not be considered as a

waiver of rights with respect to any other Default by the performing Party or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by the doctrine of waiver.

(f) **Remedies Under Ancillary Documents.** No provision of this Agreement, including but not limited to this Section 2.8, shall limit the remedies available to a Party under the Ancillary Documents.

3. **RESORT NO. 2.**

3.1 **Application.** The provisions of this Article 3 apply solely to the portion of the Resort Property that does not include the Gaylord Property and the development thereof and nothing in this Article 3 shall apply to Gaylord. Consequently, Gaylord shall not be considered a “Party” for purposes of this Article 3, and shall have no rights, obligations or liabilities with respect to the provisions of this Article 3. Any references in this Article 3 to “Party” or “Parties” shall mean and refer solely to the City and DMB or its permitted successors and assigns, as applicable, and any amendment, modification, termination or waiver of any provision in this Article 3 shall not require the consent or joinder of Gaylord. Termination of this Article 3 or any provisions hereof shall in no way impact the effectiveness of the remainder of this Agreement.

3.2 **Resort No. 2.**

(a) **Resort No. 2 Minimum Requirements.** The following are sometimes referred to collectively in this Agreement as the “**Resort No. 2 Minimum Requirements.**” Grant by the City of the Resort No. 2 Economic Benefits (as defined herein) is conditioned upon satisfaction of the Resort No. 2 Minimum Requirements.

(1) **Golf Course.** There shall be constructed on a portion of the Resort Property that does not include the Gaylord Property a Professional Golfers’ Association of America championship 18-hole golf course (“**Golf Course**”).

(2) **Gaylord Minimum Requirements.** Commencement of Construction of the Hotel Improvements and the Convention Center Improvements consistent with the quality, character, size and other standards incorporated in the Gaylord Hotel Minimum Requirements and Gaylord Convention Center Minimum Requirements shall have timely occurred and construction of the vertical Hotel Improvements and Convention Center Improvements shall be underway.

(3) **Construction Conditions.** There shall be constructed on the Resort No. 2 Property a hotel/resort facility (the “**Resort No. 2 Improvements**”) which shall comply with the following standards at the date of Completion of Construction and at the Opening Date:

(A) Resort No. 2 shall contain a minimum of four hundred and ninety (490) Traditional Hotel Rooms, and utilize a room and suite mix generally

comparable to the Hyatt Regency Hill Country®, Hyatt Lost Pines® or Westin Kierland® hotels (the “Comparable Resorts”).

(B) Resort No. 2 shall contain amenities consistent in quantity, quality and type associated with those at the Comparable Resorts and be consistent in overall quality, range of facilities and services at the Comparable Resorts as of the date of approval of this Agreement by the City.

(C) Resort No. 2 shall be designed and constructed in a manner to, upon Completion of Construction and commencement of operations, qualify for a “four diamond” rating by the AAA or for a comparable designation, full-service, first-class luxury resort, reflecting a high degree of hospitality and service; provided that, notwithstanding the foregoing, Resort No. 2 is not required to have or to maintain such a designation (e.g., four diamond) from a third-party rating entity.

(4) **Commencement of Construction.** Commencement of Construction of the Resort No. 2 Improvements shall occur no later than December 31, 2011, subject to Enforced Delay.

(5) **Completion of Construction.** Completion of Construction of the Resort No. 2 Improvements shall occur no later than December 31, 2014, subject to Enforced Delay.

(b) **Conditions to Resort No. 2 Economic Benefits.** The Resort No. 2 Minimum Requirements are not contractual obligations of DMB and the failure to satisfy the Resort No. 2 Minimum Requirements will not constitute a Default, but rather are conditions precedent to the obligation of the City to grant the Resort No. 2 Economic Benefits.

### 3.3 **Contemplated Development Matters.**

(a) **City Review and Approval of Plans.** DMB recognizes that development and construction of the Resort No. 2 Improvements pursuant to this Agreement are subject to the City’s normal and customary plan submittal, review and approval processes.

(b) **Compliance with Applicable Laws.** All development upon and within any portion of the Resort No. 2 Property, including construction of the Resort No. 2 Improvements, shall be in full compliance with all Applicable Laws.

### 3.4 **Additional Resort No. 2 Obligations.**

(a) **Resort No. 2 Operator.** At the Opening Date, Resort No. 2 shall be operated by Hyatt Corporation, Westin or a professional hotel management comparable to Hyatt Corporation or Westin (“Approved Resort No. 2 Operator”) unless otherwise approved by the City, which approval shall not to be unreasonably withheld, conditioned or delayed. If prior to the Opening Date the responsibility for operation of Resort No. 2 is assigned to an entity that is not an Approved Resort No. 2 Operator or approved by the City, then the City’s obligation to pay the Tourism Promotion Amount/Resort No. 2 pursuant to Section 3.5(c) shall be cancelled



from and after such assignment and until the responsibility for operation of Resort No. 2 is assigned to an entity that is an Approved Resort No. 2 Operator or is approved by the City.

(b) **Compliance with Federal Immigration Laws and Regulations.**

To the extent that A.R.S. § 23-214(b) is applicable, DMB and the Resort No. 2 lessee or owner shall comply, and be responsible for all non-compliance, with A.R.S. § 23-214(b) and all other Applicable Laws.

3.5 **Resort No. 2 Economic Benefits.**

(a) **Premises.** The City has determined that the development of the Resort No. 2 Property with the Resort No. 2 Improvements (i) will enhance the economic viability of the City in numerous ways, including, without limitation, (A) increasing transaction privilege tax revenues and other revenues to the City, (B) increasing the City's employment base, (C) stimulating further economic development, and (D) otherwise improving or enhancing the economic welfare of the residents of the City; (ii) is not likely to occur (or to occur at this time and/or in this manner and/or at this location) without the benefits provided in this Agreement; and (iii) demonstrates the potential to generate revenues and other benefits (both tangible and intangible) to the City that outweigh the costs associated with these benefits. Accordingly, the City shall provide to the Resort No. 2 lessee or owner the economic benefits described in this Section 3.5 (the "**Resort No. 2 Economic Benefits**"), in consideration of and solely and expressly conditioned upon satisfaction of the Resort No. 2 Minimum Requirements.

(b) **Resort No. 2 -- Conveyance and Lease.** On or after the Effective Date, the City will accept a conveyance of the Resort No. 2 Property, or portion thereof, from DMB or its permitted successor or assign utilizing the form of special warranty deed attached to this Agreement as **Exhibit "F"** (the "**Special Warranty Deed – Resort No. 2 Property**"), and thereupon the City shall lease the Resort No. 2 Property back to DMB or its permitted successor or assign pursuant to the form of lease attached to this Agreement as **Exhibit "G"** (the "**Resort No. 2 Lease**"). Notwithstanding the foregoing, the obligation of the City to accept the conveyance of the Resort No. 2 Property is expressly conditioned upon the City's prior approval, in its reasonable commercial discretion, of an environmental site assessment of the Resort No. 2 Property, with such assessment (i) being prepared and issued by a licensed environmental consultant or engineer reasonably satisfactory to the City, (ii) being certified to the City and the City Council, and (iii) being dated no earlier than one hundred eighty (180) days prior to the date of conveyance. DMB shall pay and be solely responsible for all costs and expenses required in connection with the issuance and certification of such assessment to the City. The presence of a recognized environmental condition (whether present or historic), inter alia, shall constitute grounds for the City's reasonable disapproval of the environmental site assessment.

(c) **Payments of Tourism Promotion Amounts/Resort No. 2.**

(1) **Tourism Promotion Amount/Resort No. 2.** "**Tourism Promotion Amount/Resort No. 2**" means, for the purposes of this Agreement, an amount measured by the first two percent (2%) portion of the City's Bed Tax relating to Resort No. 2 only (and no other portion of the City's Transaction Privilege Tax as defined or described in the

City Code), actually collected and received by the City with respect to or from activities on the Resort No. 2 Property. Such two percent (2%) is to remain fixed during the Term, notwithstanding any increase in the City's Bed Tax for any reason whatsoever. The risk of decrease in the Bed Tax rate shall rest solely with DMB.

(2) **Payments.** Upon satisfaction by DMB of the Resort No. 2 Minimum Requirements, the City shall commence paying the Tourism Promotion Amount/Resort No. 2 as follows and subject to the following limitations: To DMB, or its permitted successor or assign, until the earlier of (i) thirty (30) years from Completion of Construction of the Resort No. 2 Improvements, or (ii) the date the payment of the Tourism Promotion Amount/Resort No. 2 equals Seven Million Dollars (\$7,000,000.00) in present value computed as of the Completion of Construction of the initial Resort No. 2 Improvements and utilizing a discount rate of twelve percent (12%) from the date of payment to the date of such Completion of Construction to compute the present value of all payments made (the "**Total Promotion Cap/Resort No. 2**").

(3) **City's Administrative Costs.** Notwithstanding anything in this Section to the contrary, during each fiscal year, the City shall retain the first \$25,000.00 of all Bed Taxes collected from or with respect to Resort No. 2 to help defray the City's costs and expenses (including but not limited to personnel costs) incurred in administering the Special Account/Resort No. 2 and the payments to Resort No. 2 to be made hereunder (the "**Annual Administrative Cost**"). The City shall not be required to account for such costs or to provide evidence of incurrence, the amount of the Annual Administrative Cost being a fixed and agreed-upon amount. The Annual Administrative Cost shall be increased on January 1<sup>st</sup> of each year during the Term by the amount of the increase in the "consumer price index" from the previous January 1st, if any, measured by The United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers (CPI-U), U.S. City Average (1982-1984=100) or any replacement or reasonable substitute index selected by the City if CPI-U is no longer compiled or published ("**CPI**"); but in no event shall the amount of the Annual Administrative Cost be decreased from the amount established for the immediately preceding year.

(4) **Accounting.**

(A) The City shall account for Bed Taxes used for the computation of the Tourism Promotion Amount/Resort No. 2 under this Agreement by way of journal entry (or, at the City's election, deposit) in a special account established to facilitate the computations and payments anticipated by this Agreement (the "**Special Account/Resort No. 2**"). The Special Account/Resort No. 2 shall be a bookkeeping record or entry of the City; and the City may, but shall not be required, to deposit the funds reflected in the Special Account/Resort No. 2 in a separate account at a bank or other financial institution or otherwise. The first credit to the Special Account/Resort No. 2 shall be made after the Completion of Construction of the Resort No. 2 Improvements, within sixty (60) days following the City's receipt of a monthly transaction privilege tax report that includes Bed Taxes actually paid to and received by the City with respect to the Resort No. 2 Property (each, a "**Monthly Tax Report/Resort No. 2**"), and subsequent credits shall be made within sixty (60) days following

the City's receipt of each subsequent Monthly Tax Report/Resort No. 2 until the expiration of the payment obligations as described in Section 3.5(c)(2). The quarterly Tourism Promotion Amount/Resort No. 2 paid to the Resort No. 2 lessee or owner shall be debited by the City from the Special Account/Resort No. 2.

(B) Notwithstanding the credit of funds to the Special Account/Resort No. 2, neither DMB nor the Resort No. 2 lessee or owner shall have any rights in the Special Account/Resort No. 2 and no payment of Tourism Promotion Amount/Resort No. 2 shall be made to the Resort No. 2 lessee or owner until the Minimum Resort No. 2 Requirements have been met; provided, however, prior to such occurrence, the Tourism Promotion Amounts/Resort No. 2 shall accumulate in the Special Account/Resort No. 2 for subsequent disbursement as described in this Section 3.5(c) and the pledge thereof in accordance with Section 3.5(c)(8) shall remain in full force and effect until such agreement is terminated. If the Resort No. 2 Minimum Requirements are not met and this Agreement is terminated as described in Section 3.6, all funds and interest accrued thereon in the Special Account/Resort No. 2 shall be credited to the City free of any claims by DMB or the Resort No. 2 lessee or owner, as applicable, and the Special Account/Resort No. 2 shall terminate.

(5) **Quarterly Payments.**

(A) Payments of the Tourism Promotion Amount/Resort No. 2 shall be made quarterly on the schedule set forth on Schedule 2.5(c)(4) attached hereto. Notwithstanding anything contained in such Schedule, the first payment of a Tourism Promotion Amounts/Resort No. 2 (which shall include accumulated Tourism Promotion Amounts/Resort No. 2, if any, reflected in the Special Account/Resort No. 2) shall be made by the City to Resort No. 2 a lessee or owner at the first regularly scheduled payment date following the date the Resort No. 2 Minimum Requirements have been satisfied.

(B) Notwithstanding any provision of this Section 3.5(c)(5) to the contrary, the City may make payments of the Tourism Promotion Amount/Resort No. 2 more often than required under the terms of this Agreement. The City's decision to do so, however, shall not alter the schedule of City payments applicable thereafter.

(6) **Computation and Report of Tourism Promotion Amount/Resort No. 2.** Within ninety (90) days following the end of each City fiscal year, the City will deliver to the Resort No. 2 lessee or owner a statistical report of the Tourism Promotion Amounts/Resort No. 2 received from taxable activities at the Resort No. 2 Property. Any such report shall be subject to Applicable Laws that may prohibit or limit the dissemination or use of personal, financial or tax information by the City. The City's computation, certified as accurate by its chief financial officer, shall be final, binding and non-appealable, except for a mathematical error in the computation. Subject to the foregoing, DMB shall have the right to contest any computation within such report if, and only if, DMB notifies the City within sixty (60) days after the receipt of any City report.

(7) **Use of Tourism Promotion Amount/Resort No. 2.**

(A) DMB covenants and agrees that DMB shall use Tourism Promotion Amount/Resort No. 2 solely for “promotion of tourism” as used in A.R.S. §9-500.06, as amended, or any replacement or successor statute, provided, however, that the promotion of tourism shall be limited to promoting locations in Mesa, which activities may include, but are not limited to, any and all forms of advertising and promotion of Resort No. 2, including, without limitation, all forms of media advertising (including television, radio, print, billboard, brochure and Internet), direct mail, direct marketing, sponsorship marketing and related promotional activities, marketing through trade associations, including, without limitation, targeted marketing trips to association meetings, conventions and related events, complimentary trips to familiarize convention or trade show organizers with Resort No. 2, other travel to promote Resort No. 2, and other advertising and promotional activities developed as part of an overall advertising and marketing strategy to promote Resort No. 2. Such marketing costs may also include, without limitation, direct and indirect costs, such as salaries, benefits and bonuses, related to the hiring or compensation of sales, public relations and marketing staff provided, however that such staff costs are directly related to promoting Resort No. 2 or otherwise marketing attractions and facilities in the City.

(B) DMB agrees (and the Resort No. 2 lessee or owner, by acceptance of any payment of Tourism Promotion Amount/Resort No. 2, shall be deemed to have agreed) that the City, upon payment of the Tourism Promotion Amount/Resort No. 2 to the Resort No. 2 lessee or owner shall have no obligation to review, supervise or oversee the use of Tourism Promotion Amount/Resort No. 2 received by the Resort No. 2 lessee or owner, but instead may unconditionally rely upon the covenants and agreements contained in this Agreement. Notwithstanding the foregoing, the City, at its expense, may, within eighteen (18) months after the end of any fiscal year of the Resort No. 2 lessee or owner, review the use of all Tourism Promotion Amounts/Resort No. 2 paid to the Resort No. 2 lessee or owner. The Resort No. 2 lessee or owner, by acceptance of such payment, shall be deemed to have agreed to cooperate fully with any such review and produce all documentation and other evidence of use of the Tourism Promotion Amounts/Resort No. 2 reasonably requested, from time-to-time, by the City or, if applicable, the State. The Resort No. 2 lessee or owner by its acceptance of the Tourism Promotion Amount/Resort No. 2 shall be deemed to have covenanted and agreed to maintain its books and records relating to its expenditure of the Tourism Promotion Amount/Resort No. 2 for a period of seventy-two (72) months after the end of any fiscal year of the Resort No. 2 lessee or owner and will cooperate with the City in connection with any review of such expenditures by the State of Arizona.

(8) **Pledge by City.** The City hereby pledges the revenues received from the Bed Taxes with respect only to Resort No. 2 (the “**RN2 Bed Taxes**”) described in Section 3.6(c) for the payment of the Tourism Promotion Amount/Resort No. 2. The City intends that this pledge shall be a lien upon the RN2 Bed Taxes to secure timely payment of the benefit amounts described in this Article 3.

(A) This pledge is subordinate and subject to all existing pledges of the RN2 Bed Taxes to outstanding obligations of the City. The City will not make

any additional pledge of the RN2 Bed Taxes on a basis senior to, or on parity with, the pledge described in this Section 3.6(c)(8).

(B) The amounts due hereunder are secured by a pledge of, and are payable solely from, the RN2 Bed Taxes collected from Resort No. 2 and actually received by the City. The City is not obligated to make any payments from any other funds of the City. This obligation does not represent or constitute, and shall not represent or constitute, a debt or a direct or indirect pledge of the full faith and credit of the City, or of the State of Arizona, or of any political subdivision or agency thereof.

(C) The RN2 Bed Taxes paid hereunder shall be used solely for the purposes provided in this Section 3.6, and DMB shall not pledge or assign this obligation of the City or its right to receive payment hereunder as security for any loans or other obligations of any nature except in connection with or pursuant to a Mortgage. DMB shall not sell, assign or transfer in any manner, this obligation of the City or DMB's right to receive payments hereunder, except with respect to an assignment or transfer of all of DMB's rights under this Agreement pursuant to Section 7.10.

3.6 **Nonperformance of Construction Conditions.** The Resort No. 2 Minimum Requirements must be satisfied in accordance with the terms and conditions of this Agreement prior to the City being obligated to grant the Resort No. 2 Economic Benefits. Failure to meet the Resort No. 2 Minimum Requirements will not constitute a Default, nor will it entitle City to seek specific performance or to pursue other legal or equitable remedies; provided, however, (i) if Commencement of Construction of the Resort No. 2 Improvements fails to occur on or before the date set forth in Section 3.2(a)(4) and such failure (A) is not due to an Enforced Delay and (B) continues for a period of ninety (90) days following written notice from the City or (ii) if Completion of Construction of the Resort No. 2 Improvements fails to occur on or before the date set forth in Section 3.2(a)(5) and such failure (A) is not due to an Enforced Delay and (B) continues for a period of one hundred and eighty (180) days following written notice from the City, the City may terminate Article 3 of this Agreement by written notice to DMB, in which event (i) the City shall re-convey the Resort No. 2 Property and all improvements thereon to DMB, (ii) the Resort No. 2 Lease shall automatically and without further act terminate; and (iii) any payment and pledge obligation of the City under Section 3.5 of this Agreement shall automatically and without further act terminate.

### 3.7 **Default and Cure Period.**

(a) Except as otherwise provided in Section 3.6 of this Agreement, if DMB or the City fails to perform its obligations under this Agreement and such failure continues for a period of sixty (60) days after written notice thereof from the other Party (the "**Cure Period**"), such failure shall constitute a default under this Agreement (a "**Default**"); provided, however, that if the failure is such that more than sixty (60) days would reasonably be required to perform such action or comply with any term or provision hereof, then such Party shall have such additional time as may be necessary to perform its obligations so long as such Party commences performance or compliance within said sixty (60) day period and diligently proceeds to complete such performance. Any notice of an alleged Default shall specify the nature of the

alleged Default and the manner in which said Default may be satisfactorily cured. If a Default is not cured within the Cure Period, the non-defaulting Party shall have the remedies set forth in Section 3.7(b) or Section 3.7 (c) of this Agreement, as applicable.

(b) **City Remedies.**

(1) Whenever a Default occurs and is not cured (or, if appropriate, cure undertaken) by DMB in accordance with Section 3.7(a) of this Agreement, the City's sole and exclusive remedies shall consist of and be limited to the following, in addition to the remedies specified in Section 3.7(a):

(A) The City may recover any amounts owing to the City pursuant to any payment obligations of DMB under this Agreement;

(B) The City may seek injunctive, specific performance or declaratory relief for any non-monetary Default which continues after the notice period and Cure Periods set forth in Section 3.7(a). DMB further agrees that injunctive, specific performance or declaratory relief for any non-monetary Default is appropriate in the event of a failure by DMB to perform any of its performance obligations under this Agreement.

(C) With respect to a failure to comply with the provisions of Section 3.4(a), the City shall have the exclusive remedies specifically set forth in that Section.

(D) In any event, DMB's indemnification obligations under this Agreement shall survive expiration or termination of this Agreement, for a period equal to the applicable statute of limitations, and the City shall have all remedies available at law or in equity or under this Agreement, to enforce and give effect to its indemnification rights, other than the right to terminate this Agreement.

(E) All such remedies shall be cumulative and not exclusive of one another except as provided in this Agreement, and the exercise of any one or more of the remedies shall not constitute a waiver or election with respect to any other available remedy.

(c) **DMB Remedies.** Whenever a Default occurs and is not cured (or, if appropriate, cure undertaken) by the City in accordance with the notice and Cure Period provisions of Section 3.7(a) of this Agreement, the City expressly acknowledges and agrees that DMB may seek specific performance, an injunction special action, declaratory relief or other similar relief requiring the City to undertake and fully and timely perform its obligations under this Agreement and/or DMB may seek damages from the City limited to the amount of any undisbursed funds that a court determines should properly be disbursed to DMB, and not for any other damages of any kind or nature. City further agrees that specific performance, special action, declaratory or injunctive relief is appropriate in the event of a failure to disburse funds due and payable to DMB or its permitted successor or assign or the Resort No. 2 lessee or owner, as appropriate, under the terms of this Agreement or a failure by City to perform any of its

performance obligations under this Agreement. Except as expressly provided herein, DMB expressly waives any and all right to seek damages as a remedy with respect to a Default by the City, although any order or equitable decree may require the City to pay monies it may be obligated to pay pursuant to this Agreement. All such remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of the remedies shall not constitute a waiver or election with respect to any other available remedy.

(d) **Limitation on Damages.** Claims for damages by the City (when and if permitted) shall be limited to actual and consequential damages as of the time of entry of judgment. DMB's right to damages shall be limited to the circumstances and amount specified in Section 3.7(c). The City and DMB hereby waive any right to seek punitive, multiple, exemplary or any other damages.

(e) **Delays; Waivers.** Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Default by the other Party shall not be considered as a waiver of rights with respect to any other Default by the performing Party or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by the doctrines of waiver.

(f) **Remedies Under Ancillary Documents.** No provision of this Agreement, including but not limited to this Section 3.7, shall limit the remedies available to a Party under the Ancillary Documents.

#### 4. **ENFORCED DELAY.**

4.1 **Events Constituting Enforced Delay.** Whether stated or not, all periods of time in this Agreement are subject to this Section except for the due dates for the payments of the Tourism Promotion Amounts/Hotel and Tourism Promotion Amount/Resort No. 2 and the Cure Periods in Sections 2.8 and 3.7). None of Gaylord, DMB or the City, as the case may be, shall be considered to have caused a Default, nor shall Gaylord or DMB be deemed to have failed to satisfy the Gaylord Minimum Requirements in the case of Gaylord or the Resort No. 2 Minimum Requirements in the case of DMB with respect to its obligations under this Agreement in the event of a delay (an "**Enforced Delay**") due to causes beyond its control and without its fault, negligence or failure to comply with the Applicable Laws, including, but not restricted to, (i) acts of God, acts of the Federal or state government, acts of a Third Party, litigation or other action authorized by law concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby, fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, act of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of national emergency or national alert, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain by any governmental body on behalf of any public, quasi-public, or private entity, or declaration of

moratorium or similar hiatus directly affecting the Proving Grounds by any governmental entity; (ii) the order, judgment, action, or determination of any court, administrative agency, governmental authority or other governmental body (collectively, an “**Order**”) which delays the completion of the work or other obligation of the Party claiming the delay, unless it is shown that such Order is the result of the failure to comply with Applicable Laws by the Party claiming the delay; provided, however, that the contesting in good faith of any such Order shall not constitute or be construed or deemed as a waiver by a Party of Enforced Delay; and (iii) unreasonable delay in processing or unreasonable denial of any application, permit, license, request for approval, plan or submittal by Gaylord in the case of the Hotel and/or Convention Center, or by DMB in the case of Resort No. 2, or the imposition of any unreasonable requirement in connection with any approval process provided that all initial submittals by Gaylord in the case of the Hotel and/or Convention Center, or by DMB in the case of Resort No. 2, are completed and comply with Applicable Laws and submittal requirements (“**Processing Delay**”). In no event will Enforced Delay include any delay resulting from general economic or market conditions, from the unavailability for any reason of particular tenants or purchasers of portions of the Proving Grounds, from the unavailability of financing or financing on terms acceptable to Gaylord or DMB, as applicable, from labor shortages, nor from the unavailability for any reason of particular materials or other supplies, contractors, subcontractors, vendors, investors or lenders desired by Gaylord or DMB, as applicable. It is understood and agreed that Gaylord and DMB, as applicable, will bear all risks of delay which are not Enforced Delay.

4.2 **City Delay.** If Gaylord or DMB, as applicable, asserts that a Processing Delay is the result of any unreasonable delay in processing or unreasonable denial of any application, permit, license, request for approval, plan or submittal by the City (a “**City Delay**”) and if the City disputes such fact, the City and Gaylord or DMB, as applicable, shall promptly meet and confer to attempt to resolve such dispute. If City and Gaylord or DMB, as applicable, are unable to agree on whether a City Delay has occurred as the result of any unreasonable delay in processing or unreasonable denial of any application, permit, license, request for approval, plan or submittal by the City, the issue shall be resolved by arbitration under the Commercial Arbitration Rules of the Phoenix, Arizona office of the American Arbitration Association (“**AAA**”) or any comparable organization agreed upon by the parties (“**Arbitration Entity**”). Any disputes subject to arbitration will be heard and decided by a single independent arbitrator appointed by the Arbitration Entity who has experience and qualifications appropriate to resolve the matter in dispute. The decision of the arbitrator will be final and binding on both parties. Notwithstanding anything in this Agreement to the contrary, any arbitration pursuant to this Section shall be limited to whether any delay in processing or denial of any application, permit, license, request for approval, plan or submittal by the City is unreasonable.

4.3 **Notice of Enforced Delay.** In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay. The Party seeking the benefit of the provisions of this Article 4 shall, within thirty (30) days after such Party knows or reasonably should know of any such Enforced Delay, first notify the other Party or Parties of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay.

## 5. **REPRESENTATIONS.**



5.1 **City Representations.** The City represents and warrants to each of Gaylord and DMB that:

(a) The City's execution and approval of this Agreement have been in compliance with the procedural requirements of the Mesa City Charter and the Mesa City Code.

(b) The City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement and evidence this Agreement.

(c) As of the date of this Agreement, the City knows of no litigation, proceeding, initiative, referendum, or official investigation contesting the powers of the City or its officials with respect to this Agreement including the City's execution, delivery and performance hereof, that has not been disclosed in writing to Gaylord or DMB, as applicable.

(d) The execution, delivery and performance of this Agreement by the City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which the City is a party or is otherwise subject.

(e) The City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

5.2 **Gaylord Representations.** Gaylord represents and warrants to the City that:

(a) Gaylord's execution and approval of this Agreement have been in compliance with the organizational/formation and operating documents of Gaylord. Gaylord has provided the City with a copy of its organizational/formation and operating documents and a certified copy of the resolution or other entity action authorizing (including incumbency certificate) execution and performance of this Agreement.

(b) Gaylord will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement and evidence this Agreement.

(c) As of the date of this Agreement, Gaylord knows of no litigation, proceeding or official investigation contesting the powers of Gaylord or its officers with respect to this Agreement including Gaylord's execution, delivery and performance hereof, that has not been disclosed in writing to the City.

(d) The execution, delivery and performance of this Agreement by Gaylord is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Gaylord is a party or is otherwise subject.

(e) Upon the filing by a Third Party of any action at law or in equity or the assertion of any claim, cause of action or judicial or non-judicial proceeding relating or pertaining, directly or indirectly, to the Gaylord Economic Benefits, whether or not Gaylord is a

party to such claim, action or proceeding, and whether or not negligence, gross negligence or intentional misconduct by the City is alleged, Gaylord shall cause such action or proceeding (including all claims against the City, its employees or council members) to be timely defended by counsel selected by Gaylord and acceptable to the City in its reasonable discretion. The City shall fully cooperate in the defense of such action or proceeding in coordination with Gaylord's counsel, at Gaylord's sole cost and expense. The City may, in its sole discretion, select its own counsel to defend the City, at its own cost and expense, provided, however, that City shall take no action or position that is in conflict with or otherwise interferes with Gaylord's defense of such action. Gaylord shall further pay, defend, indemnify and hold harmless the City and all City officials and councilpersons, from and against any cost, expense, including attorneys' fees, liability, judgment, award or indebtedness arising from or relating to any final non-appealable judgment entered in any such action or proceeding against the City. The foregoing defense and indemnity obligations shall extend to and include, without limitation, any claim or cause of action challenging the validity or enforceability of any provision of this Agreement relating or pertaining to the Gaylord Economic Benefits. In addition to, and without limiting, the foregoing, if the City is required by any final non-appealable court order or judgment or governmental directive to pay or to repay any sums to any Third Party or to forfeit or relinquish the right to receive State revenue sharing monies or any other sum, as a consequence of this Agreement or the Gaylord Economic Benefits under this Agreement, then in such event Gaylord shall promptly and upon written demand from the City pay, repay or reimburse the City (or the Third Party, as appropriate) all such amounts that the City is or has been ordered or required to pay or repay to such Third Party or to recover for the City or to forfeit or relinquish. The City shall cooperate in the defense of any action or proceeding relating to the foregoing, undertaken by Gaylord at its sole cost and expense and the City shall take no action or position in conflict with, or otherwise interfere with, such action or proceeding. Notwithstanding anything in this Agreement to the contrary, the obligations set forth in this Section 5.2(e) shall survive termination or expiration of this Agreement. The foregoing indemnity shall not limit Gaylord's remedies in the event of any Default by the City.

(f) Gaylord has not paid or given, and will not pay or give, any Third Party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

(g) Gaylord has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

5.3 **DMB Representations**. DMB represents and warrants to the City that:

(a) DMB's execution and approval of this Agreement have been in compliance with the organizational/formation and operating documents of DMB. DMB has provided the City with a copy of its organizational/formation and operating documents and a certified copy of the resolution or other entity action authorizing (including incumbency certificate) execution and performance of this Agreement.

(b) DMB will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement and evidence this Agreement.

(c) As of the date of this Agreement, DMB knows of no litigation, proceeding or official investigation contesting the powers of DMB or its officers with respect to this Agreement including DMB's execution, delivery and performance hereof, that has not been disclosed in writing to the City.

(d) The execution, delivery and performance of this Agreement by DMB is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which DMB is a party or is otherwise subject.

(e) Upon the filing by a Third Party of any action at law or in equity or the assertion of any claim, cause of action or judicial or non-judicial proceeding relating or pertaining, directly or indirectly, to the Resort No. 2 Economic Benefits, whether or not DMB is a party to such claim, action or proceeding, and whether or not negligence, gross negligence or intentional misconduct by the City is alleged, DMB shall cause such action or proceeding (including all claims against the City, its employees or council members) to be timely defended by counsel selected by DMB and acceptable to the City in its reasonable discretion. The City shall fully cooperate in the defense of such action or proceeding in coordination with DMB's counsel, at DMB's sole cost and expense. The City may, in its sole discretion, select its own counsel to defend the City, at its own cost and expense, provided, however, that City shall take no action or position that is in conflict with or otherwise interferes with DMB's defense of such action. DMB shall further indemnify and hold harmless the City and all City officials and councilpersons, from and against any cost, expense, liability, judgment, award or indebtedness arising from or relating to any final non-appealable judgment entered in any such action or proceeding against the City initiated by a Third Party except to the extent arising out of the gross negligence or willful misconduct of the City. In addition to, and without limiting, the foregoing, if the City is required by any final, non-appealable judgment or court order or governmental directive to pay or to repay any sums to any Third Party, or to forfeit or relinquish the right to receive State revenue sharing monies or any other sum, as a consequence of this Agreement or the Resort No. 2 Economic Benefits under this Agreement, then in such event, DMB, shall promptly and upon written demand from the City pay, repay or reimburse the City (or the Third Party, as appropriate) all such amounts that the City is or has been ordered or required to pay or repay to such Third Party or to forfeit or relinquish. The City shall fully cooperate in the defense of any action or proceeding relating to the foregoing undertaken by DMB at its sole cost and expense and the City shall take no action or position in conflict with, or otherwise interfere with, such action or proceeding. Notwithstanding anything herein to the contrary, the obligations set forth in this Section 5.3(e) shall survive termination of this Agreement. The foregoing indemnity shall not limit DMB's remedies in the event of any Default by the City.

(f) DMB has not paid or given, and will not pay or give, any Third Party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

(g) DMB has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

5.4 **Limitation on Representations.** Except as expressly stated herein, no Party has made any representation regarding the validity, enforceability, tax effect, or any other aspect of this Agreement or the Ancillary Documents.

6. **NOTICES AND FILINGS.**

6.1 **Manner of Service.** Except as otherwise required by law, all notices, demands or other communications given hereunder shall be in writing and shall be given by personal delivery, delivered by recognized national "overnight" courier service (such as UPS or FedEx), transmitted by telefax or by United States certified mail (return receipt requested), with all postage and other delivery charges prepaid, and addressed as follows:

To the City: City of Mesa  
20 East Main Street  
Mesa, Arizona 85211  
Attention: City Manager  
Fax: (480) 905-1419

Copy to: City of Mesa  
20 East Main Street  
Mesa, Arizona 85211  
Attention: City Attorney  
Fax: (480) 905-1419

Copy to : Mariscal, Weeks, McIntyre & Friedlander, P.A.  
2901 North Central Avenue, Suite 200  
Phoenix, Arizona 85012  
Attention: Gary L. Birnbaum, Esq.  
Fax: (602) 285-5100

To DMB: DMB Mesa Proving Grounds, LLC  
7600 East Doubletree Ranch Road, Suite 300  
Scottsdale, Arizona 85258-2137  
Attention: John L. Bradley  
Fax: (480) 367-7718

Copy to: DMB Associates, Inc.  
7600 East Doubletree Ranch Road, Suite 300  
Scottsdale, Arizona 85258-2137  
Attention: General Counsel  
Fax: (480) 367-7576

Copy to: Greenberg Traurig  
2375 East Camelback Road, Suite 700  
Phoenix, Arizona 85016  
Attention: Rebecca L. Burnham, Esq.  
Fax: (602) 445-8664

To Gaylord: Gaylord Mesa, LLC  
c/o Gaylord Entertainment Company  
1 Gaylord Drive  
Nashville, Tennessee 37214  
Attention: Senior Vice President of Development  
Fax: (615) 316-6557

Copy to: Gaylord Entertainment Company  
1 Gaylord Drive  
Nashville, Tennessee 37214  
Attention: General Counsel and Secretary  
Fax: (615) 316-6544

Copy to: Latham & Watkins LLP  
335 South Grand Avenue  
Los Angeles, California 90071-1560  
Attention: Ursula H. Hyman, Esq.  
Fax: (213) 891-8763

6.2 **Effective Date of Notices.** All such notices, demands or other communications will (i) if delivered personally or delivered through a same day delivery/courier service be deemed effective upon delivery or refusal to accept delivery by the addressee, (ii) if delivered by telefax be deemed effective upon transmittal provided there is documented confirmation that such transmittal was successful, (iii) if delivered by U.S. Mail in the manner described above be deemed effective upon the earlier of receipt or three (3) business days after deposit in a United States post office or with a United States postal officer, and (iv) if delivered by a recognized national overnight delivery service be deemed effective one (1) business day after deposit with such service (in each case regardless of whether such notice, demand or other communication is received by any person to whom a copy of such notice, demand or other communication is to be delivered pursuant to this Section). Any payment by any Party required or permitted under this Agreement may be made by personal delivery, U.S. Mail in the manner described above, recognized national overnight delivery service or, if the Party entitled to receive such payment provides wiring instructions to the Party obligated to make such payment, via wire transfer, provided if such payment is made by personal delivery, U.S. Mail in the manner described above or recognized national overnight delivery service in the manner provided in Section 6.1, such payment shall be deemed made at the time provided in this Section 6.2 for notices, demands and other communications.

## 7. GENERAL PROVISIONS.

7.1 **Waiver.** Without limiting any provision of Sections 2.8(e) and 3.7(e), the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

7.2 **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together constitute one (1) and the same instrument. The signature pages from one (1) or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

7.3 **Headings.** The descriptive headings of the Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

7.4 **Exhibits and Recitals.** Any exhibit attached hereto shall be deemed to have been incorporated into this Agreement by this reference with the same force and effect as if fully set forth in the body of this Agreement. The Recitals set forth at the beginning of this Agreement (Paragraphs A through L, inclusive), and the introductory paragraphs preceding the Recitals, are incorporated into this Agreement, and the Parties hereby confirm the accuracy of the Recitals. Notwithstanding the incorporation by reference of all exhibits into this Agreement, the express terms of the default and remedy sections contained in this Agreement apply only to this Agreement, and the express terms of the default and remedy sections contained in the Hotel Lease, the Convention Center Lease and the Resort No. 2 Lease, as applicable, shall apply only to such lease.

7.5 **Construction.** The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been, or has had the opportunity to be, represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings. The Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement (or any other provision of this Agreement) shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of same. In the event of any conflict or inconsistency between any terms of this Agreement and any term of any Ancillary Document, the provisions of this Agreement shall control.

7.6 **Further Assurances.** Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require from time to time to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or to confirm the status of (a) this Agreement as in full force and effect, and (b) the performance of the obligations hereunder at any time during its Term.

7.7 **Business Days.** If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

7.8 **Time of Essence.** Time is of the essence in implementing the terms of this Agreement.

7.9 **Attorney's Fees and Costs.** In the event of commencement of a legal action or proceeding in an appropriate forum by a Party to enforce any covenant, term, provision or requirement of this Agreement, or any of such Party's rights or remedies under this Agreement, or on in the event of commencement of any action or proceeding seeking a declaration of the rights of any Party or equitable or injunctive relief against any Party, the prevailing Party or Parties in any such action or proceeding shall be entitled to recovery of its reasonable attorneys' fees, court costs and expenses, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the Parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental expenses associated with such dispute. The award shall be made by the Court and not by a jury.

7.10 **Successors and Assigns.**

(a) All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Parties pursuant to A.R.S. § 9-500.05(D); provided, however, that:

(1) Gaylord's rights and obligations hereunder may be assigned or transferred only at any time the assignor is not in Default under any provision of this Agreement to a single person or entity that has acquired the entirety of such rights and obligations (i) as a successor in interest to Gaylord or any Mortgagee or (ii) pursuant to foreclosure of any Mortgage on the Gaylord Property or deed in lieu thereof; provided that, in any case, the successor has expressly and in writing for the benefit of the City either (A) assumed all of the obligations of the assignor under this Agreement, including but not limited to all obligations of Gaylord arising prior to the date of such assignment or transfer, and all of the right, title and interest in the Hotel, the Hotel Lease, the Convention Center and the Convention Center Lease or (B) assumed all of the obligations of the assignor under this Agreement arising from and after the date of such assignment or transfer and all of the right, title and interest in the Hotel, the Hotel Lease, the Convention Center and the Convention Center Lease; provided that in the case of an assumption pursuant to item (B), either (i) Gaylord Entertainment Company, in the

case of an assignment by Gaylord Mesa, LLC or any of its Affiliates, or (ii) a party with financial capabilities substantially equivalent to or better than the assignor on the date of such assignment (or otherwise reasonably acceptable to the City) in the case of an assignment by an assignor which is not Gaylord Mesa, LLC or its Affiliate, shall guaranty to the City the obligations of the assignor under this Agreement arising prior to the date of such assignment or transfer.

(2) DMB's rights and obligations as to Resort No. 2 and the Golf Course, respectively, may be assigned or transferred only at any time the assignor is not in Default under any provision of this Agreement to a single person or entity that has acquired the entirety of such rights and obligations (i) as a successor in interest to DMB or any Mortgagee or (ii) pursuant to foreclosure of any Mortgage on Resort No. 2 and/or the Golf Course or deed in lieu thereof; provided that, in any case, the successor has expressly and in writing for the benefit of the City either (A) assumed all of the obligations of the assignor under this Agreement (expressly including but not limited to all obligations of DMB arising prior to the date of such assignment or transfer), and all of the right, title and interest in Resort No. 2 and the Resort No. 2 Lease and/or the Golf Course, as the case may require or (B) assumed all of the obligations of the assignor under this Agreement arising from and after the date of such assignment or transfer and all of the right, title and interest in Resort No. 2 and the Resort No. 2 Lease and/or the Golf Course, as the case may require; provided that in the case of an assumption pursuant to item (B), either (i) DMB, in the case of an assignment by DMB or any of its Affiliates, or (ii) a party with financial capabilities substantially equivalent to or better than the assignor on the date of such assignment (or otherwise reasonably acceptable to the City) in the case of an assignment by an assignor which is not DMB or an Affiliate of DMB, shall guaranty to the City the obligations of the assignor under this Agreement arising prior to the date of such assignment or transfer.

(b) An assignee pursuant to an assignment or transfer made in compliance with all of the terms and provisions of this Agreement may be referred to as a "**Permitted Assignee.**" Any assignment or transfer not made in compliance with all of the terms and provisions of the Agreement shall be void, and not voidable, and shall vest no rights in the purported assignee or transferee.

(c) An assignment or transfer made by Gaylord in compliance with all of the terms and provisions of this Agreement (including, but not limited to, the terms and provisions of Section 7.10(a) above) shall operate to release Gaylord or its successor, as applicable, from (i) in the case of an assignment pursuant to Section 7.10(a)(1)(A), any liability hereunder, whether arising prior to or following the date of such assignment or transfer, or (ii) in the case of an assignment pursuant to Section 7.10(a)(1)(B), any liability hereunder arising from and after the date of such assignment or transfer.

(d) An assignment or transfer made by DMB in compliance with all of the terms and provisions of this Agreement (including, but not limited to, the terms and provisions of Section 7.10(a) above) shall operate to release DMB or its successor, as applicable, from (i) in the case of an assignment pursuant to Section 7.10(a)(2)(A), any liability hereunder, whether arising prior to or following the date of such assignment or transfer, or (ii) in the case of an assignment pursuant to Section 7.10(a)(2)(B), any liability hereunder arising from and after the date of such assignment or transfer.



(e) Any Permitted Assignee may further assign or transfer its rights and obligations under this Agreement only in compliance with this Section 7.10.

7.11 **Term.** Subject to Sections 7.10 and the indemnification provisions of Section 5.2 and 5.3 of this Agreement, this Agreement shall terminate without further action upon the earlier of (i) the expiration of the latest of the Ancillary Documents, or (ii) the termination of this Agreement pursuant to its terms; or (iii) the completion of all performance obligations of all Parties (the "**Term**").

(a) The annexation of the Resort Property into the City is a condition subsequent to the effectiveness of this Agreement and the obligations of the Parties arising under this Agreement, which shall not become operative until and unless the Resort Property is annexed into the City. If the Resort Property has not been annexed into the City by December 31, 2009, then this Agreement, without further act or notice required, shall expire and terminate, and the Parties shall have no rights or obligations hereunder.

(b) Gaylord and DMB represent to the City that Gaylord is party to a contract with DMB to acquire the Gaylord Property which contract is subject to completion of Gaylord's due diligence and related evaluation thereof, and the satisfaction of all conditions precedent. Gaylord may (or, if the contract with DMB is terminated, DMB may), by written notice to the City, advise the City that Gaylord will not acquire the Gaylord Property, whereupon this Agreement shall terminate and none of the Parties shall have any liability or obligation hereunder, except for those liabilities and indemnities that, by the terms of this Agreement, survive the termination of this Agreement.

(c) This Agreement shall automatically terminate and be of no further force or effect if the Economic Benefits are not approved by the electors of the City in the manner required by law. Such termination shall be effective on the first day after the City Clerk has certified the results of the Election. If the City does not call the Election by May 31, 2009, Gaylord may terminate this Agreement by written notice to City and DMB.

(d) If at the time of a termination pursuant to either paragraph (b) or (c) above, this Agreement is the subject of any pending action or proceeding which Gaylord is defending pursuant to Section 5.2(h), the City may notify Gaylord in writing within fifteen (15) days after it receives Gaylord's termination notice (the "**Election Date**") that the City wishes to assume the defense of such action or proceeding. If the City assumes such defense, Gaylord shall have no further obligation to defend such action or proceeding from and after the Election Date, nor shall Gaylord have any further indemnity obligation hereunder with respect to such pending action or proceeding, except as stated at the end of this Section 7.11(d). If the City does not elect to assume defense of such action or proceeding, the City shall cooperate with Gaylord and take whatever actions as may be necessary to effectuate a dismissal of such action or proceeding with prejudice, and Gaylord may instruct the counsel retained to defend such action or proceeding to take such actions as may be necessary to cause the action or proceeding to be dismissed with prejudice. If the City elects to assume defense of such action or proceeding and if that action or proceeding results in the City being required by judgment or settlement agreement to pay the opposing party(ies), then Gaylord's indemnity obligations hereunder shall

remain in full force and effect with respect to such amounts provided that in no event shall Gaylord be obligated to contribute to such payment by the City in an amount greater than Gaylord was obligated to pay by judgment or proposed settlement agreement as of the Election Date.

(e) Except as otherwise provided herein, the Parties hereby acknowledge and agree that this Agreement is not intended to, and shall not create conditions or exceptions to title or covenants running with the residential lots within the Proving Grounds and any tracts or land intended to be dedicated or conveyed to the City, any other public or quasi-public entity, any utility provider, any homeowners association or any school district. Therefore, in order to alleviate any concern as to the effect of this Agreement on the status of title to any of the Proving Grounds, so long as not prohibited by law, this Agreement shall terminate without the execution or recordation of any further document or installment as to any residential lot and any tracts or land dedicated or conveyed to the City, any utility provider, any homeowners association or any school district, and thereupon such residential lot and any tracts or land dedicated or conveyed to City, any utility provider, any homeowners association or any school district shall be released from and no longer be subject to or burdened by the provisions of this Agreement.

7.12 **No Partnership; Third Parties.** Nothing contained in this Agreement shall create, or be deemed to create, any partnership, joint venture or other similar arrangement between the City and Gaylord or between the City and DMB or between Gaylord and DMB. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a Party hereto, and no such other person, firm, organization or corporation shall have any right or standing to any cause of action hereunder; except that each Mortgagee shall be a third party beneficiary of the provisions of this Section 7.12, and except that the protection of the indemnification provisions of this Agreement shall extend to all agents, attorneys, Council members and employees of the City acting in the course and scope of their employment or engagement and all such persons shall be, and are intended to be, third party beneficiaries of such indemnification provisions.

7.13 **Entire Agreement.** This Agreement and the Ancillary Documents, constitute the entire agreement between the Parties pertaining to its subject matter. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written (including any term sheets, discussion outlines or similar documents), are hereby superseded and merged into this Agreement.

7.14 **Amendment.**

(a) No change, addition or deletion is to be made to this Agreement except by a written amendment approved by the City Council and executed by the Parties; provided, however, any change, addition or deletion to Article 2 can be made by a written amendment executed by the City and Gaylord, or their successors and assigns (without the consent or approval of DMB) and any change, addition or deletion to Article 3 can be made by a written amendment executed by the City and DMB, or their successors and assigns (without the consent or approval of Gaylord).

(b) City Manager shall have the authority, without further action of the City Council, (i) to amend this Agreement for purposes of substituting a revised **Exhibit A-3** delineating changes in the boundaries of the Golf Course, the Hotel Property, the Convention Center Property and the Resort No. 2 Property within the Resort Property, and (ii) to amend this Agreement for purposes of substituting a revised **Exhibit A-2** describing minor adjustments in the boundary of the Resort Property and/or to record an affidavit of correction modifying the boundary of the Resort Property.

(c) Within ten (10) days after any approved amendment to this Agreement, pursuant to this **Section 7.14**, such approved amendment shall be recorded in the office of the Maricopa County, Arizona Recorder.

**7.15 Limited Severability.** The Parties agree that in the event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring the City to do any act in violation of any Applicable Law) such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required; but provided further, that in no event shall any such reformation require any payment of, or commitment to pay, monies from or to be received in the General Fund of the City, other than the Bed Tax relating to the Gaylord Hotel or Resort No. 2, as appropriate. The Parties further shall perform all acts and execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as and if reformed in accordance with this **Section 7.15**.

**7.16 Governing Law; Choice of Forum.** This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this **Section 7.16**.

**7.17 Recordation.** This Agreement shall be recorded in its entirety by the City in the office of the Maricopa County, Arizona Recorder not later than ten (10) days after this Agreement is executed by the City, Gaylord and DMB and the Consents are executed by GMC and the Existing Lender.

**7.18 Survival.** All representations, warranties and indemnities contained in this Agreement shall survive the execution and delivery of this Agreement, the consummation of any transaction contemplated herein, and the rescission, cancellation, expiration or termination of this Agreement for the period of the applicable statute of limitations.

7.19 **Status Statements.** Any Party (the “**Requesting Party**”) may, at any time, and from time to time, deliver written notice to any other Party requesting such other Party (the “**Providing Party**”) to provide in writing that, to the knowledge of the Providing Party, (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended or modified, and if so amended, identifying the amendments, (c) the Requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults, and (d) any other matter reasonably requested (a “**Status Statement**”). A Party receiving a request hereunder shall execute and return such Status Statement within fifteen (15) business days following the receipt thereof. The City Manager (or his or her designee) shall have the right to execute any Status Statement requested by Gaylord and/or DMB hereunder. The City acknowledges that a Status Statement hereunder may be relied upon by transferees and mortgagees; provided, however, the City shall have no liability for monetary damages to Gaylord or DMB, respectively, or any transferee or mortgagee, or to any other person in connection with, resulting from or based upon the good faith provision of any Status Statement by the City.

7.20 **Rights of Lenders.** Notwithstanding any other provision hereof:

(a) Gaylord and DMB may each convey, pledge, encumber, grant security interests in, or otherwise transfer, by deed of trust, mortgage, collateral assignment, security agreement, or similar instrument (each a “**Mortgage**”), all or any portion of its interest in and to any of its property which is subject hereto, including any improvements constructed thereon and any leasehold interests therein, and including its rights under this Agreement, in favor of one or more persons (each a “**Mortgagee**”). Such Mortgage shall be subject to all of the terms and provisions of this Agreement (including, without limitation, the obligation to use any portion of the Tourism Promotion Amount/Gaylord or Tourism Promotion Amount/Resort No. 2, as applicable, received by any Mortgagee in accordance with the terms of Section 2.6 or 3.5, as applicable), except as otherwise expressly provided herein, but further provided that in no event shall the right to collect any sum under Sections 2.6 or 3.5 of this Agreement be held by any person other than the fee title owner, lessee, Mortgagee in possession, or Mortgagee in operational control of the Hotel and Convention Center or Resort No. 2, as applicable.

(b) If the City is given notice of any Mortgage, and the address to which notices to the Mortgagee(s) can be sent, the City will thereafter simultaneously send to such Mortgagee(s), at the address so given, a copy of any notice given to Gaylord or DMB, as applicable, alleging non-performance by Gaylord or DMB, as applicable, which could entitle the City to exercise its rights or pursue remedies hereunder. All such notices shall be given pursuant to the provisions of Section 6.1 hereof.

(c) Any Mortgagee shall be deemed to be a Requesting Party as set forth in Section 7.19 hereof and the City Manager (or his or her designee) shall have the right to execute any Status Statement requested by any Mortgagee. Additionally, upon the request of any Mortgagee, the City shall execute and deliver a Non-Disturbance and Recognition Agreement in the form attached hereto as Exhibit “H” (or in such other form substantially similar thereto as may be requested by such Mortgagee).

7.21 **Nonliability of City Officials.** No City Council member, official, representative, agent, attorney or employee of the City shall be personally liable to Gaylord or DMB, or to any successor in interest to Gaylord or DMB, in the event of any Default by the City or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of the City under the terms of this Agreement.

7.22 **Proposition 207 Waiver.** Each of Gaylord and DMB hereby waives and releases the City (“**Waiver**”) from any and all claims under A.R.S. § 12-1134, *et seq.*, including any right to compensation for reduction to the fair market value of all or any part of the Gaylord Property or the remainder of the Resort Property, respectively, as a result of the City’s approval of this Agreement, annexation and adoption of initial zoning of the Proving Grounds and any part thereof and all related zoning, land use, building and development matters arising from, relating to, or reasonably inferable from this Agreement, including the approval, rejection or imposition of conditions or stipulations upon the approval of the zoning designation of Planned Community District, as described in the Zoning Ordinance of the City of Mesa for all or any part of the Proving Grounds. The terms of this Waiver shall run with all land that is the subject of this Agreement and shall be binding upon all subsequent landowners, assignees, lessees and other successors, and shall survive the expiration or earlier termination of this Agreement.

7.23 **Good Faith of Parties.** Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

7.24 **Conflict of Interest Statute; Compliance with Financing Requirements.** This Agreement is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. §38-511.

7.25 **Payment of City’s Consultants’ and Attorney Fees.** Gaylord and DMB, promptly, from time to time, and following written request by the City, shall reimburse the City for all present and future fees (and related costs and expenses) paid and/or incurred by the City for its consultants (except for costs associated with the independent economic analysis required by A.R.S. §9.500.11, which costs shall be borne solely by the City) and outside legal counsel services in connection with the discussion, negotiation, review, drafting and performance of this Agreement and all Ancillary Documents, whether or not this Agreement has been approved and adopted by the Council. The reimbursement obligation of Gaylord and DMB shall include fees incurred before and after City Council consideration of this Agreement. The reimbursement obligation described in this Section 7.25 shall be a joint and several obligation of Gaylord and DMB.

7.26 **Statutory Notice.** This Agreement and the Ancillary Documents contemplate leases between a government lessor and prime lessees (as such terms are defined in A.R.S. §§ 42-6201(1) and (4)) with respect to certain real property and/or improvements. Accordingly, the following notice is provided in accordance with A.R.S. § 42-6206: (i) each of the prime lessees is subject to tax liability under the Government Property Lease Excise Tax

provisions of A.R.S. §§ 42-6201 et seq.; and (ii) and failure by the prime lessee to pay the above-referenced tax after notice and an opportunity to cure is an event of default that could result in divesting the prime lessee of any interest or right of occupancy of the government property improvement (as defined in A.R.S. § 42-6201(2)).

7.27 **Economic Benefit Findings.** Pursuant to A.R.S. § 9-500.11(D), the City finds that:

(a) The proposed tax incentives contemplated by this Agreement are anticipated to raise more revenue than the amount of the incentives within the duration of this Agreement; and

(b) In the absence of the tax incentives described in this Agreement, the business facilities described in this Agreement or similar business facilities would not locate in the City in the same time, place or manner.

7.28 **Representatives of the Parties.** The following representatives are appointed in order to assist with the expeditious development of the Gaylord Property and the remainder of the Resort Property:

(a) **City Representative.** The City hereby appoints, authorizes and empowers the City Manager to provide the City's consent, waiver or approval as required hereunder and to grant extensions of any of the time periods set forth in this Agreement without further action of the City Council, except for any actions requiring City Council approval as a matter of law. All such consents, waivers, approvals, or extensions shall be in writing and signed by the City Manager, or any City employee designated in writing by the City Manager to give such consent, waiver, extension, or approval.

(b) **Gaylord Representative.** Gaylord hereby appoints, authorizes and empowers David C. Kloeppe, Executive Vice President to provide Gaylord's consent, waiver or approval as required hereunder and to grant extensions of any of the time periods set forth in this Agreement without further action of Gaylord or its managing member, except for any actions requiring approval by the Gaylord's managing member as a matter of law. All such consents, waivers, approvals, or extensions shall be in writing and signed by Gaylord's Executive Vice President, or any authorized officer designated in writing by Gaylord's Executive Vice President to give such consent, waiver, extension, or approval.

(c) **DMB Representative.** DMB hereby appoints, authorizes and empowers John Bradley, Vice President and Project Manager, to provide DMB's consent, waiver or approval as required hereunder and to grant extensions of any of the time periods set forth in this Agreement without further action of DMB or its Member(s), except for any actions requiring approval by the DMB Member(s) as a matter of law. All such consents, waivers, approvals, or extensions shall be in writing and signed by DMB's Project Manager or any authorized officer designated in writing by DMB's Project Manager to give such consent, waiver, extension, or approval.

7.29 **Developer Reimbursement of City Expenses for Election.** Gaylord and DMB, promptly and following written demand by the City, shall reimburse the City for all expenses incurred by the City in connection with the Election, including but not limited to advertising costs, costs of preparing and printing ballots. As a preliminary reimbursement, Gaylord and DMB shall pay to the City, within thirty (30) days after approval of this Agreement by the City Council, the sum of Two Hundred and Fifty Thousand and no/100 Dollars (\$250,000.00). If the cost of the Election to the City exceeds \$250,000.00, then Gaylord and DMB shall reimburse such additional amounts to the City immediately upon demand; and if the cost of the Election to the City is less than \$250,000.00, the City shall return any excess amount paid by Gaylord and DMB promptly upon the City's determination of its actual Election expense. There is no "cap" on the amount of such reimbursement, and Gaylord's and DMB's obligation of reimbursement is not dependent upon the outcome of the Election and shall survive the termination of this Agreement for any reason, including but not limited to the failure of the Economic Benefits to have been approved in the Election. In the event that Gaylord and DMB fail to reimburse the City for the expense of the Election as required by this Section 7.29, in addition to any other remedy that the City may have against Gaylord and DMB to recover the expense of the Election, the City may reduce Gaylord's and/or DMB's entitlement to the incentives set forth in Sections 2.6(c) and 3.5(c) hereof by the amount of such expense.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor, and Gaylord and DMB have signed the same, on or as of the day and year first written above.

**CITY:**

CITY OF MESA, ARIZONA, an Arizona municipal corporation

By: *Christopher J. Brady*  
Its: City Manager

**ATTEST:**

By: *Sinda Crocker*  
City Clerk

**APPROVED AS TO FORM**

By: *Debra Spurrin*  
Mesa City Attorney

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA )

The foregoing instrument was acknowledged before me this 12 day of NOVEMBER, 2008, by CHRISTOPHER J. BRADY, the CITY MANAGER of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of the City.

*[Signature]*  
Notary Public

My commission expires:

MARCH 28, 2011





**GAYLORD:**

GAYLORD MESA, LLC a Delaware limited liability company

By: [Signature]  
Its: David C. Kloeppel  
Executive V. P. & Chief Financial Officer

STATE OF TENNESSEE )  
COUNTY OF DAVIDSON )

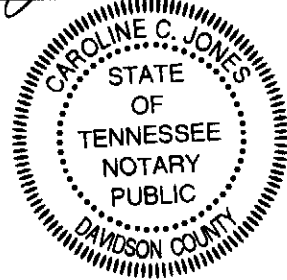
Before me, the undersigned, a Notary Public of the State and County aforesaid, personally appeared David C. Kloeppel with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the President of Gaylord Mesa, LLC, the within named bargainer, a Tennessee limited liability company, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as President.

WITNESS my hand, at office, this 10<sup>th</sup> day of November, 2008

[Signature]

MY COMMISSION EXPIRES November 14, 2009 Notary Public

My Commission Expires: \_\_\_\_\_



DMB:

DMB MESA PROVING GROUNDS, LLC, a  
Delaware limited liability company

By: DMB Associates, Inc., an  
Arizona corporation, its Manager

By: *J. Bradley*  
Its: \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of  
November, 2008, by John Bradley, the Vice President of DMB Mesa Proving  
Grounds, LLC, an Arizona limited liability company.

*Cass Kershner*  
Notary Public

My commission expires:  
March 22, 2011



TENANT CONSENT

The undersigned, as Tenant under that certain "Lease", by and between DMB MESA PROVING GROUNDS, LLC, a Delaware limited liability company ("DMB MPG"), as Lessor, and Tenant, dated December 28, 2006, evidenced by that certain Memorandum of Lease, dated December 28, 2006, recorded as Document No. 2006-1695608 in the Official Records of Maricopa County, Arizona, in respect of certain real property which includes the real property that is the subject of this Pre-Annexation and Development Agreement, dated November 3, 2008, by and among the CITY OF MESA, ARIZONA, an Arizona municipal corporation, GAYLORD MESA, LLC, a Delaware limited liability company, and DMB MPG (the "Agreement"), hereby: (i) acknowledges that the Agreement shall bind that portion of the real property that is subject to the Lease and subject to the Agreement; (ii) approves the recordation of the Agreement; (iii) represents and warrants that the undersigned has the requisite right, power and authorization to enter into, execute, and deliver this Tenant Consent on behalf of Tenant; and (iv) Tenant has been assisted by counsel of its own choosing in connection with the preparation and execution of this Tenant Consent. By acceptance of this Tenant Consent, the Parties acknowledge and recognize the continued operations of Tenant on the Resort Property so long as the Lease remains in effect and agree that such operations shall not be affected by the Agreement, nor, so long as such operations continue as they are currently conducted and are in compliance with applicable laws, will the Parties object to the continuation of such operations under the terms of the Lease.

DATED: November 11, 2008

GENERAL MOTORS CORPORATION, a Delaware corporation

By: [Signature]  
Name: ROCH X. McCLAIN  
          DIRECTOR  
Its: WORLDWIDE REAL ESTATE

Michigan  
STATE OF ~~ARIZONA~~  
                                  )ss.  
County of Wayne

Execution Recommended  
Worldwide Real Estate  
By: [Signature]

The foregoing was acknowledged before me this 11 day of November 2008, by Roch McClain, the Director of General Motors Corporation, a Delaware corporation, on behalf thereof.

[Signature]  
Notary Public

My Commission Expires:

RANDY DE VOE TREUTER  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF OAKLAND  
MY COMMISSION EXPIRES Aug 25, 2012  
ACTING IN COUNTY OF Wayne


## EXISTING LENDER CONSENT

---

The undersigned, as Beneficiary ("Existing Lender") under that certain DEED OF TRUST AND FIXTURE FILING (With Assignment of Rents and Security Agreement) (the "Deed of Trust"), by and between DMB MESA PROVING GROUNDS, LLC, a Delaware limited liability company ("DMB MPG"), as Trustor, and FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, as Trustee, dated December 28, 2006, and recorded on December 28, 2006 as Document No. 2006-1695609 in the Official Records of Maricopa County, Arizona, in respect of certain real property which includes the real property that is the subject of this Pre-Annexation and Development Agreement, dated Nov 3, 2008, by and among the CITY OF MESA, ARIZONA, an Arizona municipal corporation, GAYLORD MESA, LLC, a Delaware limited liability company, and DMB MPG (the "Agreement"), but not as a party, hereby: (i) consents to the Agreement; (ii) acknowledges that the Agreement shall bind that portion of the real property that is subject to the Deed of Trust and subject to the Agreement; (iii) approves the recordation of the Agreement; (iv) agrees to execute, acknowledge and deliver such additional documents and instruments reasonably required to consummate, evidence, or carry out the matters contemplated by the Agreement and this Existing Lender Consent; (vii) agrees that the Agreement shall continue in full force and effect, at Existing Lender's option, in the event of foreclosure or trustee's sale pursuant to such Deed of Trust or any other acquisition of title by the undersigned, its successors, or assigns, of all or any portion of the real property covered by such Deed of Trust; (viii) represents and warrants that the undersigned has the requisite right, power and authorization to enter into, execute, and deliver this Existing Lender Consent on behalf of Beneficiary; and (ix) the execution and delivery of this Existing Lender Consent by Beneficiary is not prohibited by, and does not conflict with any other agreements or instruments to which Beneficiary is a party. Notwithstanding the second paragraph in the Agreement, Existing Lender does not agree to "attorn to and recognize the term, conditions provisions and obligations" of the Agreement, but instead agrees to provide this consent and acknowledge such terms, conditions, provisions and obligations.

DATED: November 7<sup>th</sup>, 2008

SAN DIEGO NATIONAL BANK, a national  
banking association

By:   
Name: Elliot Jensen  
Its: Senior Vice President

STATE OF ARIZONA)

)ss.

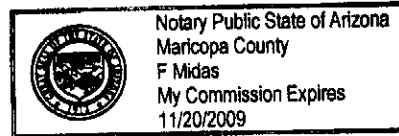
County of Maricopa)

The foregoing was acknowledged before me this 7<sup>th</sup> day of November 2008 by ELLIOT TENSEN, the SR. VICE PRESIDENT of San Diego National Bank, a national banking association, on behalf thereof.

F Midas  
\_\_\_\_\_  
Notary Public

My Commission Expires:

11-20-2009



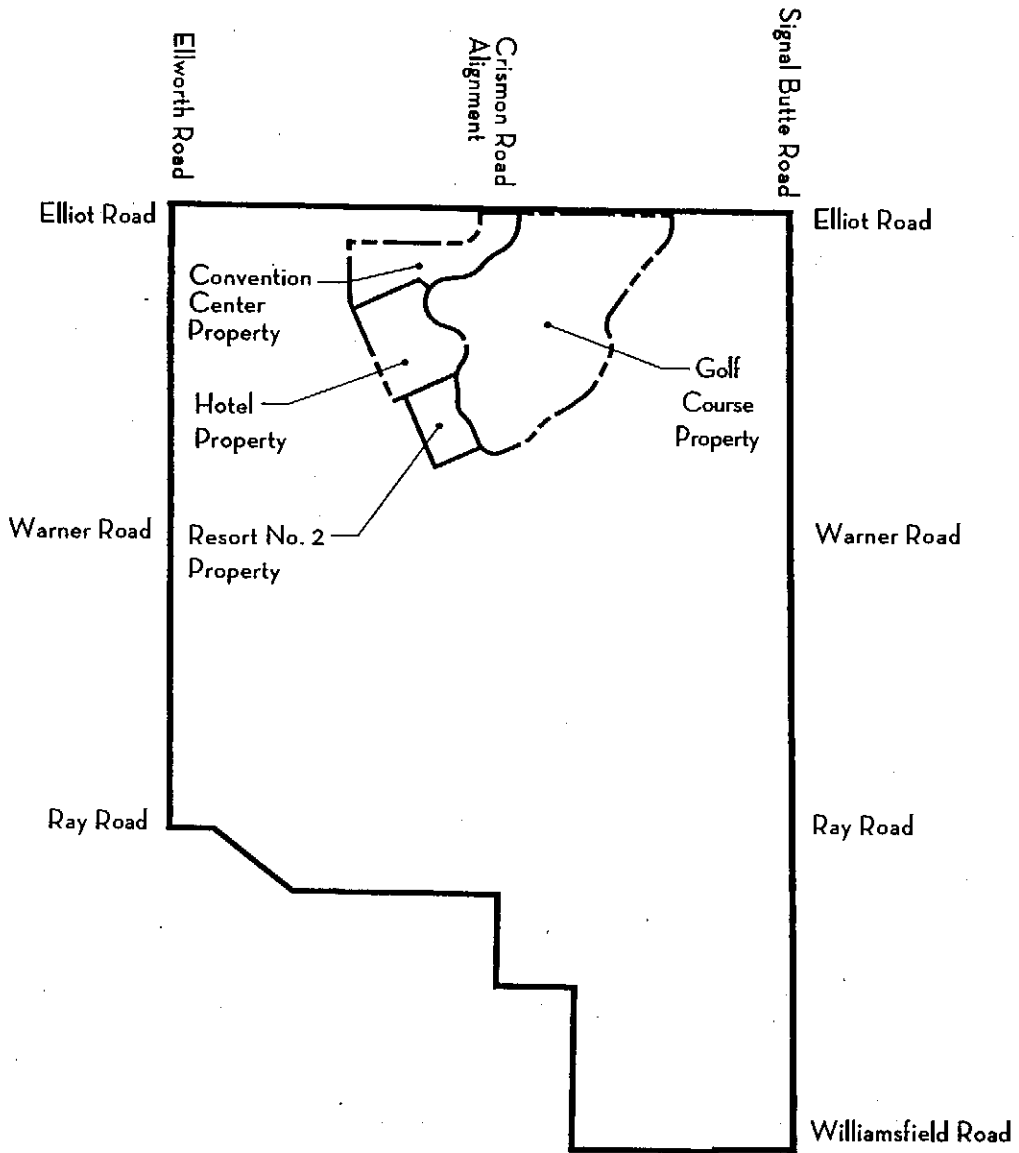
## **LIST OF EXHIBITS AND SCHEDULES**

Exhibit "A-1":	Proving Grounds Depiction
Exhibit "A-2":	Resort Property Legal Description
Exhibit "A-3":	Depiction of Resort Property, Hotel Property, Convention Center Property and Resort No. 2 Property
Exhibit "B":	Special Warranty Deed – Gaylord Property
Exhibit "C":	Hotel Lease
Exhibit "D":	Convention Center Lease
Exhibit "E":	Development, Financing Participation and Intergovernmental Agreement No. 1 (Gaylord Community Facilities District )
Exhibit "F":	Special Warranty Deed – Resort No. 2 Property
Exhibit "G":	Resort No. 2 Lease
Exhibit "H":	Sample Non-Disturbance and Recognition Agreement
Schedule 2.6(c)(2)(C)(I):	Total Promotion Cap/Hotel for Fewer Than 1500 Rooms
Schedule 2.6(c)(2)(C)(II):	Increase in Total Promotion Cap/Hotel
Schedule 2.6(c)(4):	Tourism Promotion Amounts Payment Schedule

**EXHIBIT A-1**

**Proving Grounds Depiction  
(SEE ATTACHED)**

# Proving Grounds



## MESA PROVING GROUNDS



North  
N.T.S.  
16 Oct 08



**EXHIBIT A-2**

**Resort Property Legal Description  
(SEE ATTACHED)**

Wood, Patel & Associates, Inc.  
(480) 834-3300  
www.woodpatel.com

October 13, 2008  
WP# 083262.04  
Page 1 of 5  
See Exhibit "A"

**PARCEL DESCRIPTION**  
**Mesa Proving Grounds**  
**Resort Property**

**Parcel 1**

A parcel of land lying within Sections 14 and 15, Township 1 South, Range 7 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the northeast corner of said Section 14, a 3-inch Maricopa County brass cap flush stamped 2002 RLS 36563, from which the north quarter corner of said Section 14, an iron pipe with no identification, bears North 89°45'48" West (basis of bearing), a distance of 2661.68 feet;  
**THENCE** along the north line of said Section 14, North 89°45'48" West, a distance of 2114.10 feet;  
**THENCE** leaving said north line, South 00°14'12" West, a distance of 65.00 feet, to a line parallel with and 65 feet south of the north line of said Section 14 and the **POINT OF BEGINNING**;  
**THENCE** leaving said parallel line, South 00°25'05" West, a distance of 63.24 feet, to a point of intersection with a non-tangent curve;  
**THENCE** southerly along said curve, having a radius of 429.07 feet, concave westerly, whose radius bears South 76°42'39" West, through a central angle of 55°58'30", a distance of 419.18 feet, to the curve's end;  
**THENCE** South 42°41'10" West, a distance of 456.20 feet;  
**THENCE** South 37°13'20" West, a distance of 378.34 feet;  
**THENCE** South 35°11'50" West, a distance of 692.77 feet, to a point of intersection with a non-tangent curve;  
**THENCE** southerly along said curve, having a radius of 470.12 feet, concave easterly, whose radius bears South 65°19'35" East, through a central angle of 50°59'18", a distance of 418.36 feet, to a point of reverse curvature;  
**THENCE** southerly along said curve, having a radius of 354.92 feet, concave westerly, through a central angle of 51°49'55", a distance of 321.08 feet, to the curve's end;  
**THENCE** South 25°31'02" West, a distance of 311.55 feet;  
**THENCE** South 30°39'50" West, a distance of 245.69 feet;  
**THENCE** South 32°56'35" West, a distance of 37.10 feet, to a point of intersection with a non-tangent curve;  
**THENCE** southwesterly along said curve, having a radius of 2434.53 feet, concave northwesterly, whose radius bears North 43°50'17" West, through a central angle of 16°45'18", a distance of 711.93 feet, to a point of reverse curvature;  
**THENCE** southwesterly along said curve, having a radius of 928.55 feet, concave southeasterly, through a central angle of 30°04'19", a distance of 487.35 feet, to a point of reverse curvature;  
**THENCE** southwesterly along said curve, having a radius of 456.03 feet, concave northwesterly, through a central angle of 34°13'46", a distance of 272.44 feet, to the curve's end;  
**THENCE** South 67°04'28" West, a distance of 582.66 feet, to a point of intersection with a non-tangent curve;

Parcel Description  
Mesa Proving Grounds  
Resort Property

October 13, 2008  
WP# 083262.04  
Page 2 of 5  
See Exhibit "A"

THENCE northwesterly along said curve, having a radius of 300.00 feet, concave northwesterly, whose radius bears North 21°11'55" East, through a central angle of 30°00'35", a distance of 157.13 feet, to a point of intersection with a non-tangent line;

THENCE South 66°14'53" West, a distance of 856.18 feet;

THENCE North 23°45'07" West, a distance of 1300.02 feet;

THENCE South 65°48'55" West, a distance of 213.36 feet;

THENCE North 24°11'05" West, a distance of 1631.14 feet;

THENCE North 65°48'56" East, a distance of 1095.54 feet;

THENCE South 66°46'18" East, a distance of 249.81 feet, to a point of intersection with a non-tangent curve;

THENCE northwesterly along said curve, having a radius of 400.00 feet, concave southwesterly, whose radius bears South 66°46'18" East, through a central angle of 61°27'24", a distance of 429.05 feet, to the curve's end;

THENCE North 84°41'06" East, a distance of 201.54 feet, to the beginning of a curve;

THENCE northwesterly along said curve, having a radius of 600.00 feet, concave northwesterly, through a central angle of 46°41'44", a distance of 489.00 feet, to a point of reverse curvature;

THENCE northwesterly along said curve, having a radius of 667.50 feet, concave southwesterly, through a central angle of 27°53'18", a distance of 324.90 feet, to a point of reverse curvature;

THENCE northwesterly along said curve, having a radius of 600.00 feet, concave northwesterly, through a central angle of 65°33'36", a distance of 686.54 feet, to the curve's end;

THENCE North 00°19'04" East, a distance of 123.74 feet, to said parallel line;

THENCE along said parallel line, South 89°41'01" East, a distance of 1950.87 feet;

THENCE South 89°45'48" East, a distance of 547.63 feet, to the POINT OF BEGINNING.

Containing 283.8693 acres, or 12,365,346 square feet of land, more or less.

Subject to existing rights-of-way and easements.

Parcel 2

A parcel of land lying within Sections 14 and 15, Township 1 South, Range 7 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the northwest corner of said Section 14, a 3-inch Maricopa County brass cap flush

stamped 2002 RLS 36563, from which the north quarter corner of said Section 14, an iron pipe with no

identification, bears South 89°41'01" East (basis of bearing), a distance of 2658.58 feet;

THENCE along the north line of said Section 14, South 89°41'01" East, a distance of 39.69 feet;

THENCE leaving said north line, South 00°18'59" West, a distance of 65.00 feet, to a line parallel to and

65 feet south of the north line of said Section 14 and the POINT OF BEGINNING;

THENCE along said parallel line, South 89°41'01" East, a distance of 668.06 feet;

THENCE leaving said parallel line, South 00°19'04" West, a distance of 123.74 feet, to the beginning of

a curve;

THENCE southwesterly along said curve, having a radius of 600.00 feet, concave northwesterly, through

a central angle of 65°33'36", a distance of 686.54 feet, to a point of reverse curvature;

THENCE southwesterly along said curve, having a radius of 667.50 feet, concave southwesterly, through

a central angle of 27°53'18", a distance of 324.90 feet, to a point of reverse curvature;

**Parcel Description  
Mesa Proving Grounds  
Resort Property**

October 13, 2008  
WP# 083262.04  
Page 3 of 5  
See Exhibit "A"

**THENCE** southwesterly along said curve, having a radius of 600.00 feet, concave northwesterly, through a central angle of 46°41'44", a distance of 489.00 feet, to the curve's end;  
**THENCE** South 84°41'06" West, a distance of 201.54 feet, to the beginning of a curve;  
**THENCE** southwesterly along said curve, having a radius of 400.00 feet, concave southeasterly, through a central angle of 61°27'24", a distance of 429.05 feet, to a point of intersection with a non-tangent line;  
**THENCE** North 66°46'18" West, a distance of 249.81 feet;  
**THENCE** South 65°48'56" West, a distance of 1095.54 feet;  
**THENCE** North 24°11'05" West, a distance of 197.47 feet;  
**THENCE** North 01°25'09" West, a distance of 1015.15 feet;  
**THENCE** South 89°37'50" East, a distance of 1855.27 feet, to the beginning of a curve;  
**THENCE** northeasterly along said curve, having a radius of 368.50 feet, concave northwesterly, through a central angle of 91°05'35", a distance of 585.87 feet, to the curve's end;  
**THENCE** North 00°43'25" West, a distance of 151.51 feet, to the **POINT OF BEGINNING**.

Containing 51.1308 acres, or 2,227,257 square feet of land, more or less.

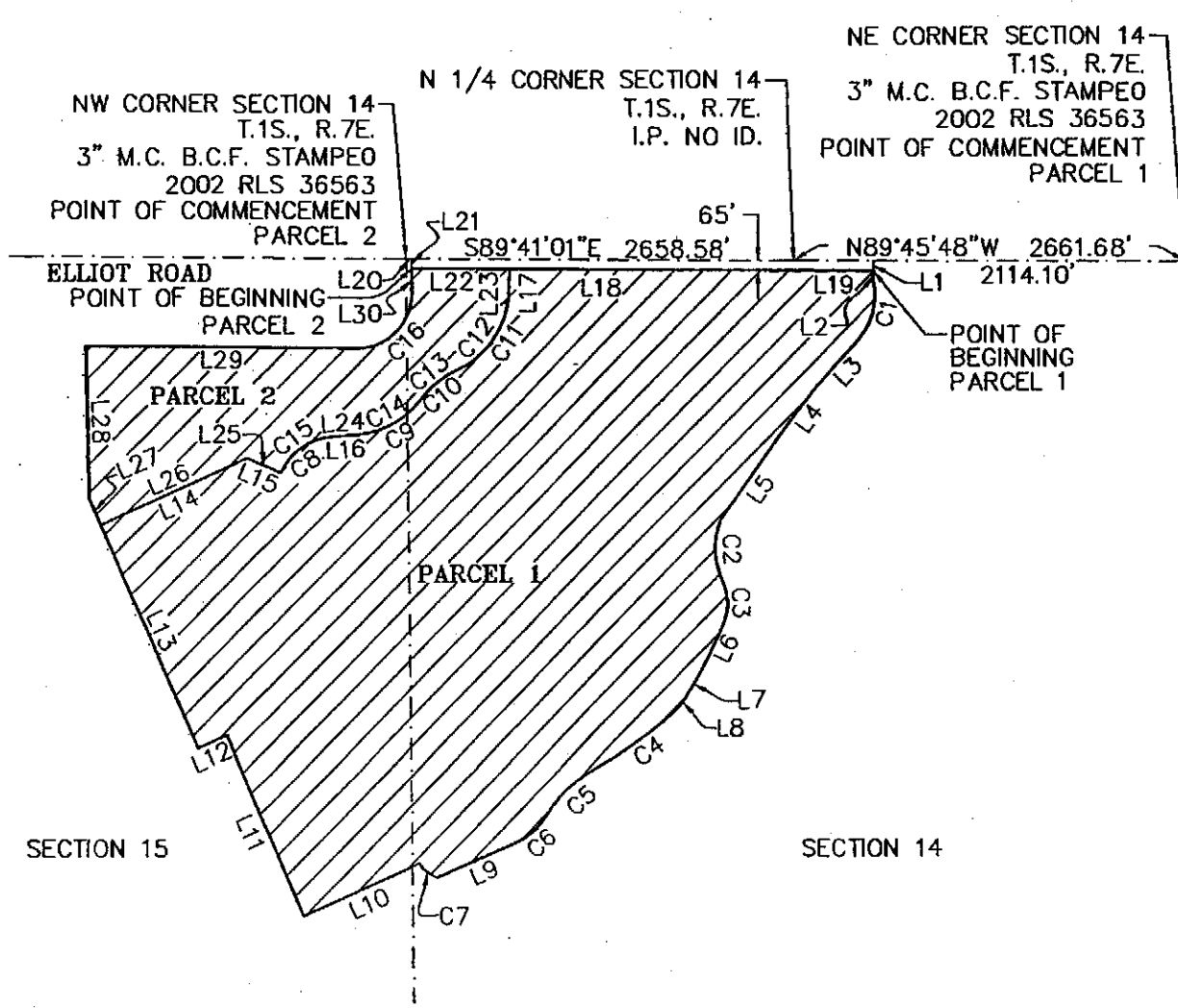
The gross area is 335.0001 acres, or 14,592,602 square feet of land, more or less.

Subject to existing rights-of-way and easements.

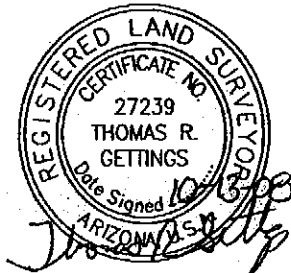
This parcel description is based on the unrecorded ALTA Survey of GM Proving Grounds prepared by CMX, dated November 21, 2006, job number 7405.01 and other client provided information. This parcel description is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of May, 2007 and any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey.

X:\Y-Drive\Parcel Descriptions (sorted by Job Number)\2008\083262.04 Mesa Proving Grounds Report Property Parcel 1 & 2 10-13-08.doc





**WOOD/PATEL**  
 1855 North Stapley Drive  
 Mesa, AZ 85203  
 Phone: (480) 834-3300  
 Fax: (480) 834-3320  
 PHOENIX • MESA • TUCSON • GOODYEAR



EXPIRES 06-30-11

**EXHIBIT "A"**  
 MESA PROVING GROUNDS

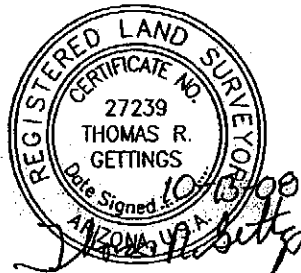
RESORT PROPERTY

10-13-08  
 WP#083262.04  
 PAGE 4 OF 5  
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LINE TABLE		
LINE	BEARING	DISTANCE
L1	S00°14'12"W	65.00'
L2	S00°25'05"W	63.24'
L3	S42°41'10"W	456.20'
L4	S37°13'20"W	378.34'
L5	S35°11'50"W	692.77'
L6	S25°31'02"W	311.55'
L7	S30°39'50"W	245.69'
L8	S32°56'35"W	37.10'
L9	S67°04'28"W	582.66'
L10	S66°14'53"W	856.18'
L11	N23°45'07"W	1300.02'
L12	S65°48'55"W	213.36'
L13	N24°11'05"W	1631.14'
L14	N65°48'56"E	1095.54'
L15	S66°46'18"E	249.81'
L16	N84°41'06"E	201.54'
L17	N00°19'04"E	123.74'
L18	S89°41'01"E	1950.87'
L19	S89°45'48"E	547.63'
L20	S89°41'01"E	39.69'
L21	S00°18'59"W	65.00'
L22	S89°41'01"E	668.06'
L23	S00°19'04"W	123.74'
L24	S84°41'06"W	201.54'
L25	N66°46'18"W	249.81'
L26	S65°48'56"W	1095.54'
L27	N24°11'05"W	197.47'
L28	N01°25'09"W	1015.15'
L29	S89°37'50"E	1855.27'
L30	N00°43'25"W	151.51'

CURVE TABLE			
CURVE	DELTA	RADIUS	ARC
C1	55°58'30"	429.07'	419.18'
C2	50°59'18"	470.12'	418.36'
C3	51°49'55"	354.92'	321.08'
C4	16°45'18"	2434.53'	711.93'
C5	30°04'19"	928.55'	487.35'
C6	34°13'46"	456.03'	272.44'
C7	30°00'35"	300.00'	157.13'
C8	61°27'24"	400.00'	429.05'
C9	46°41'44"	600.00'	489.00'
C10	27°53'18"	667.50'	324.90'
C11	65°33'36"	600.00'	686.54'
C12	65°33'36"	600.00'	686.54'
C13	27°53'18"	667.50'	324.90'
C14	46°41'44"	600.00'	489.00'
C15	61°27'24"	400.00'	429.05'
C16	91°05'35"	368.50'	585.87'

**WOOD/PATEL**  
 1855 North Stapley Drive  
 Mesa, AZ 85203  
 Phone: (480) 834-3300  
 Fax: (480) 834-3320  
 PHOENIX • MESA • TUCSON • GOODYEAR



EXPIRES 06-30-11

**EXHIBIT "A"**  
 MESA PROVING GROUNDS

RESORT PROPERTY

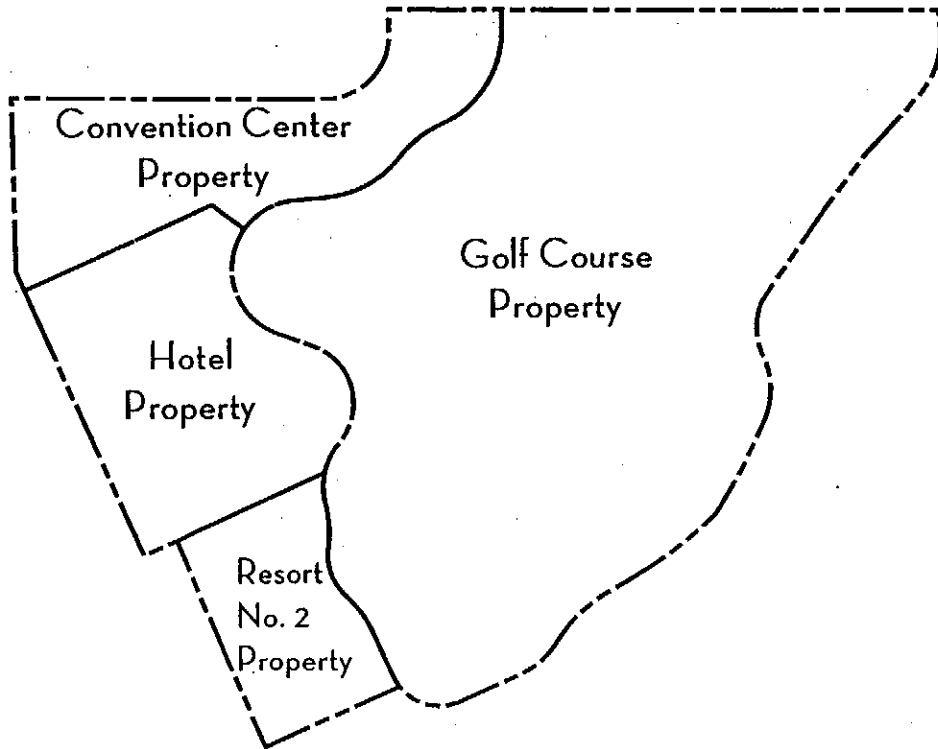
10-13-08  
 WP#083262.04  
 PAGE 5 OF 5  
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**EXHIBIT A-3**

**Resort Property Depiction  
(SEE ATTACHED)**

# Resort Property

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## MESA PROVING GROUNDS



16 Oct 08